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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1952**

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**No. 238**

**NATIONAL LABOR RELATIONS BOARD, PETITIONER,**

**VS.**

**GAMBLE ENTERPRISES, INC.**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED JULY 30, 1954**

**CERTIORARI GRANTED OCTOBER 13, 1952**



**United States Court of Appeals**  
**FOR THE SIXTH CIRCUIT.**

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**GAMBLE ENTERPRISES, INC.,**  
*Petitioner,*

**VS.**

**NATIONAL LABOR RELATIONS BOARD,**  
*Respondent.*

---

**CASE NO. 8-CB-23.,**

**APPEAL FROM DECISION AND ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD.**

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**TRANSCRIPT OF RECORD.**

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**FRANK C. HEATH,**  
**EDWARD E. RIGNEY,**

**1759 Union Commerce Building,  
Cleveland 14, Ohio,**

*Attorneys for Petitioner.*

**A. NORMAN SOMERS,**  
*Assistant General Counsel,*  
**National Labor Relations Board,**  
**Washington, D. C.,**  
*Attorney for Respondent.*

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**United States of America**  
**Before the**  
**National Labor Relations Board**  
**EIGHTH REGION.**

**CASE No. 8-CB-23.**

**In the Matter of**  
**AMERICAN FEDERATION OF MUSICIANS,**  
**LOCAL NO. 24 of AKRON, OHIO**  
**and**  
**GAMBLE ENTERPRISES, INC.**

**CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS.**

**(General Counsel's Exhibit 1-A.)**

**(Filed May 16, 1949.)**

1. Labor organization or its agents against which charge is brought: American Federation of Musicians, Local #24, Room #518 Metropolitan Building, Akron, Ohio.

The above-named organization or its agents have engaged in and are engaging in unfair labor practices within the meaning of Section (8b) Subsection (6) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets).

The Complainant operates the Palace Theatre in Akron, Ohio. Generally, its policy is to present only Mo-

tion Pictures and for this purpose does not need nor employ musicians. Occasionally it engages for appearance on the stage of the theatre Union Traveling Bands which bring with them and as a part of their Unit, a few Vaudeville Acts. The Union, against which this complaint is filed, has since October, 1947, demanded and still demands that the Complainant employ a pit orchestra, composed of its members, whenever such a Traveling Band is engaged and appears. The Complainant cannot, at such times, use such a pit orchestra, and the cost thereof would furthermore be an undue financial burden on the Complainant. The demand of the Union is in violation of Public Law 101—80th Congress, Chapter 120-First Session, and the Complainant believes, and therefore asserts, that compliance by it with the demand of the Union would likewise constitute a violation of this law (Taft-Hartley Law).

Prior to October, 1947, the Union had demanded and received so-called pay-off wages before they would permit a traveling union band to appear on the stage of the Palace Theatre. After passage of the Taft-Hartley Law, the theatre discontinued making these payments, and then the Union demanded employment in lieu thereof. The latter demand is only a subterfuge for the pay-off, and both of said demands constitute "feather bedding."

3. Name of Employer: Gamble Enterprises, Inc.

4. Location of Plant Involved (Street, City, and State): 41 South Main St., Akron, Ohio.

5. Nature of Employer's Business: Exhibition of Motion Pictures.

6. No. of Workers Employed: 9.

7. Full Name of Party Filing Charge: Gamble Enterprises, Inc., By its attorney, Leo M. Rappaport.

8. Address of Party Filing Charge (Street, City, and State): Gamble Enterprises, Inc., 41 South Main St., Akron, 8, Ohio. Leo M. Rappaport, Atty., 910 Illinois Bldg., Indianapolis, 4, Ind. Tel. No. Jefferson 5191. Lincoln 8544.

9. Declaration: *I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.*

LEO M. RAPPAPORT,  
910 Illinois Building,  
Indianapolis, 4, Indiana,  
Attorney.

May 13th, 1949.

**AFFIDAVIT OF SERVICE OF NOTIFICATION LETTER  
AND COPY OF CHARGE.**

**(General Counsel's Exhibit 1-B.)**

**Date of Mailing 5-17-49.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

American Federation of Musicians, Local #24;  
A. F. L.  
Room #518 Metropolitan Building  
Akron, Ohio

CHARLES D. BECKLEY.

(Jurat omitted.)



**AMENDED CHARGE AGAINST LABOR  
ORGANIZATION OR ITS AGENTS.****(General Counsel's Exhibit 1-C.)****(Filed November 17, 1949.)**

1. Labor Organization or its Agents Against Which Charge is Brought: American Federation of Musicians, Local #24, AFL, Room #518 Metropolitan Building, Akron, Ohio.

The above-named organization or its agents have engaged in and are engaging in unfair labor practices within the meaning of Section (8b) Subsection (6) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (*Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets*)

Since on or about October 1947 and continuously thereafter, the American Federation of Musicians, Local #24, AFL, and its agents, have demanded and still demand that Gamble Enterprises, Inc. in its operation of the Palace Theater in Akron, Ohio, pay for a local orchestra whenever a traveling band or show appears on the stage of the Palace Theater, although Gamble Enterprises, Inc. has no need for, does not want, and cannot use a pit orchestra when a traveling band or show appears on the stage of the Palace Theater.

The demand of the Union and its agents for payment for a pit orchestra under such circumstances constitutes an attempt to cause Gamble Enterprises, Inc. to pay or deliver money in the nature of an exaction for services which are not performed or not to be performed.

3. Name of Employer: Gamble Enterprises, Inc.

4. Location of Plant Involved (Street, City, and State): 41 South Main St., Akron, Ohio.

5. Nature of Employer's Business: Exhibition of Motion Pictures.

6. No. of Workers Employed: 9.

7. Full Name of Party Filing Charge: Gamble Enterprises, Inc., By its attorney, Leo M. Rappaport.

8. Address of Party Filing Charge (Street, City, and State): Gamble Enterprises, Inc., 41 South Main St., Akron 8, Ohio. Leo M. Rappaport, Atty., 910 Illinois Bldg., Indianapolis 4, Ind. Tel. No. Jefferson 5191, Lincoln 8544.

9. Declaration: *I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.*

LEO M. RAPPAPORT, Attorney,  
910 Illinois Building,  
Indianapolis 4, Indiana.

Nov. \_\_\_\_\_, 1949.

## **AFFIDAVIT OF SERVICE OF COPY OF AMENDED CHARGE.**

(General Counsel's Exhibit 1-D.)

Date of Mailing 11-17-49.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

American Federation of  
Musicians, Local #24, AFL  
Room #518 Metropolitan Building  
Akron, Ohio

SARAH RAIZ.

(Jurat omitted.)

**COMPLAINT ISSUED BY REGIONAL DIRECTOR,  
NATIONAL LABOR RELATIONS BOARD.**

**(General Counsel's Exhibit 1-E.)**

**(Issued January 3, 1950.)**

It having been charged by Gamble Enterprises, Inc. that American Federation of Musicians, Local No. 24 of Akron, Ohio, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the Labor Management Relations Act, 1947, hereinafter called the Act, the General Counsel of the National Labor Relations Board, on behalf of the said Board, by the Regional Director for the Eighth Region of the said Board, hereby issues this Complaint and alleges:

**I.**

Gamble Enterprises, Inc., hereinafter called the Employer, is and has been at all times material herein a corporation duly organized under and existing by virtue of the laws of the State of Washington, maintaining its principal office and place of business in the City of New York, New York.

**II.**

The Employer is now and has been at all times herein mentioned continuously engaged in maintaining and operating a chain of theatres in various states of the United States, including a theatre known as the Palace Theatre, in the City of Akron, Ohio, hereinafter called the Theatre.

**III.**

The Employer, in the normal course and conduct of its operations, including the operation of the Theatre, causes and has continuously caused materials and equipment—consisting principally of motion picture films, advertising supplies, and stage scenery—and personnel, all in substantial amounts and numbers, to be purchased, delivered, and transported in interstate commerce from



Complaint

points in various states of the United States to and through other states of the United States.

IV.

American Federation of Musicians, Local No. 24 of Akron, Ohio, hereinafter called the Respondent, is a labor organization within the meaning of Section 2, Subsection (5), of the Act.

V.

Respondent, at various times during February 1949 and at all times since such dates, has

(1) Insisted, demanded and requested that the Employer pay for a local orchestra whenever a traveling band or stage show is presented at the Theatre, notwithstanding the Employer does not need, does not want, and cannot use such local orchestra;

(2) Insisted, demanded, and requested that the Employer pay for "standby" musicians at the Theatre;

(3) Insisted, demanded, and requested an agreement or understanding that the Employer pay local musicians for services not used or not to be used at the Theatre; and

(4) Interfered with, prevented, and induced orchestras, bands, and stage shows to not perform for the Employer at the Theatre unless and until provision would be made for payment to local musicians for services not used or not to be used.

VI.

Respondent, by the acts described above in Paragraph V, and by each of said acts, did attempt to cause the Employer to pay or deliver or agree to pay or deliver money or other thing of value, in the nature of an exaction, for services which were not performed or not to be performed, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, Subsection (b) (6) of the Act.

## VII.

The activities and conduct of Respondent described above in Paragraph V, occurring in connection with the operations of the Employer, described above in Paragraph I, II, and III, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## VIII.

The acts of Respondent, described above, constitute unfair labor practices within the meaning of Section 8, Subsection (b) (6), and Section 2, Subsections (6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Eighth Region, on this 3rd day of January, 1950, issues this Complaint against American Federation of Musicians, Local No. 24 of Akron, Ohio, Respondent herein.

JOHN A. HULL, JR., *Regional Director*  
*National Labor Relations Board,*  
*Eighth Region.*

**NOTICE OF HEARING.**

(General Counsel's Exhibit 1-F.)

(Dated January 3, 1950.)

PLEASE TAKE NOTICE that on the 14th day of March, 1950, at 10:00 a. m., in Court Room No. 1, Eighth Floor, Municipal Building, Akron, Ohio, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that, pursuant to section 203.20 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

IN WITNESS WHEREOF the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint and Notice of Hearing to be signed by the Regional Director for the Eighth Region on this 3rd day of January, 1950.

JOHN A. HULL, JR.,  
Regional Director,  
National Labor Relations Board.

**AFFIDAVIT OF SERVICE OF CHARGE, AMENDED  
CHARGE, COMPLAINT AND NOTICE OF HEARING.**

(General Counsel's Exhibit 1-G.)

Date of Mailing January 3, 1950.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

American Federation of Musicians, Local No. 24 of  
Akron, Ohio  
518 Metropolitan Building  
Akron, Ohio  
Gamble Enterprises, Inc.  
41 South Main Street  
Akron 8, Ohio

Attention: Mr. Ron Gamble

CHARLES D. BECKLEY.

(Jurat omitted.)

Regular Mail:

Herschel Kriger, Attorney  
First National Bank Bldg.  
Canton 2, Ohio

Gilbert Dilley  
518 Metropolitan Bldg.  
Akron, Ohio

Leo M. Rappaport, Esq.  
910 Illinois Building  
Indianapolis 4, Ind.

Gamble Enterprises, Inc.  
1810 RKO Building  
Rockefeller Center  
New York 20, N. Y.

Attention: Mr. Leroy Furman

National Labor Relations Board  
Washington, D. C.

**ANSWER OF RESPONDENT, AMERICAN FEDERATION OF MUSICIANS, LOCAL NO. 24 OF AKRON, OHIO.**

**(General Counsel's Exhibit 1-H.)**

**(Dated January 23, 1950.)**

Now comes the Respondent, American Federation of Musicians, Local No. 24, of Akron, Ohio, and for its Answer to the Complaint hereinbefore issued by the General Counsel, does state as follows:

**I.**

Respondent admits that Gamble Enterprises, Inc., designated in said Complaint as the Employer, is a corporation duly organized and existing by virtue of the laws of the State of Washington with principal offices and place of business in New York.

**II.**

Respondent admits that the said Gamble Enterprises, Inc., maintains and operates a chain of theaters in various states, including a theater known as the Palace Theater in the City of Akron, Ohio.

**III.**

For want of knowledge as to the activities of the said Gamble Enterprises, Inc., Respondent denies, generally and specifically each and every allegation in Paragraph III of the Complaint contained.

**IV.**

Respondent admits that it is a labor organization within the meaning of the Act.

**V.**

Respondent denies that, at various times during February, 1949, and thereafter, it did insist, demand or request that the Employer pay for a local orchestra whenever a traveling band or stage show is presented at the said



Theater, notwithstanding the Employer does not need, does not want and cannot use such local orchestra;

Respondent denies that, at various times during February, 1949, and thereafter, it did insist, demand and request that the Employer pay for "standby" musicians at said Theater;

Respondent denies that, at various times during February, 1949, and thereafter, it did insist, demand or request an agreement or understanding that the Employer pay local musicians for services not used or not to be used at said Theater;

Respondent denies that, at various times during February, 1949, and thereafter, it did interfere with, prevent, or induce orchestras, bands, and stage shows to not perform for the Employer at the Theater unless and until provision would be made for payment to local musicians for services not used or not to be used.

## VI.

Respondent denies that by the alleged acts set forth in Paragraph V of the Complaint, or by any other Acts, or any of them, it did attempt to cause the Employer to pay or deliver or agree to pay or deliver money or other thing of value, in the nature of an exaction for services which were not performed or not to be performed, and that it did thereby engage in and is thereby engaging in unfair labor practices within the meaning of the Act.

## VII.

Respondent denies that the alleged activities of the Respondent, as alleged in Paragraph V of said Complaint, have a close, intimate and substantial relation to or affect trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## VIII.

Respondents deny that the alleged acts of the Respondent, as described in said Complaint, constitute unfair labor practices within the meaning of Section 8 (b) (6) and Section 2 (6) and (7), or any other section, of said Act.

## IX.

Respondents deny, generally and specifically, each and every allegation of said Complaint, except such as are herein specifically admitted to be true.

## X.

Further answering, Respondent says that at all times it was ready, willing and able to bargain collectively with the said Employer on terms and conditions of the employment of its membership at said theater in Akron, Ohio, but that said Employer at all times has failed and refused to meet and treat and to negotiate with the said Respondent for the purposes aforesaid, and that by reason whereof assertion of jurisdiction herein by the National Labor Relations Board would not effectuate the purposes of the Act. Respondent further says that the activities of the said Employer and the Respondent, as alleged, do not affect commerce, except very remotely, and by reason whereof the National Labor Relations Board is without jurisdiction in the premises.

WHEREFORE, Respondent prays that the said Complaint be dismissed.

AMERICAN FEDERATION OF MUSICIANS,  
Local No. 24 of Akron, Ohio,

By HERSCHEL KRIGER,

215 1st National Bank Bldg.,  
Canton, Ohio,

*Its attorney.*

(Verification omitted.)

**POSTPONEMENT OF HEARING.****(General Counsel's Exhibit 1-I.)****(Dated March 9, 1950.)****BOOK TELEGRAM TO THE FOLLOWING:**

American Federation of Musicians, Local No. 24, of Akron,  
Ohio

518 Metropolitan Building  
Akron, Ohio

Gamble Enterprises, Inc.  
41 South Main Street  
Akron, Ohio

Attention: Mr. Ron Gamble

Herschel Kriger, Attorney  
First National Bank Building  
Akron, Ohio

Gilbert Dilley  
518 Metropolitan Building  
Akron, Ohio

Leo M. Rappaport, Attorney  
910 Illinois Building  
Indianapolis, Indiana

Gamble Enterprises, Inc.  
1810 RKO Building Rockefeller Center  
New York, N. Y.

William R. Ringer, Chief Trial Examiner  
National Labor Relations Board  
Washington, D. C.

Re American Federation of Musicians, Local No. 24  
of Akron, Ohio, Case No. 8-CB-23. Hearing in this matter  
which was previously set for March 14, 1950, at ten o'clock  
A. M., is hereby postponed to two o'clock P. M., on the  
same date and at the same place.

JOHN A. HULL, *Regional Director,*  
*National Labor Relations Board,*  
*Eighth Region.*

(7 addresses.)

## OFFICIAL REPORT OF PROCEEDINGS.

(Boldface figures in parentheses denote pagination of typewritten transcript.)

(1) Court Room 3,  
Municipal Building,  
Akron, Ohio,  
Tuesday, March 14, 1950.

Pursuant to notice, the above-entitled matter came on for hearing at 2:00 p.m.

BEFORE: WILLIAM E. SPENCER, *Trial Examiner.*

### APPEARANCES:

LEO M. RAPPAPORT, ESQ., 910 Illinois Building, Indianapolis, Indiana, appearing for the Company.

JOHN H. GARVER, ESQ., 8th Regional Office, Cleveland, Ohio, appearing for General Counsel.

HERSCHEL KRIGER, ESQ., 1st National Bank Building, Canton, Ohio, appearing for the Union.

(3) Trial Examiner Spencer: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of American Federation of Musicians, Local No. 24 of Akron, Ohio, and Gamble Enterprises, Inc., Case No. 8-CB-23.

The Trial Examiner conducting this hearing is William E. Spencer.

I note the following appearances:

For the General Counsel, John H. Garver.

For the Gamble Enterprises, Inc., Leo M. Rappaport, Esq., 910 Illinois Building, Indianapolis, 4, Indiana.

For American Federation of Musicians, Local No. 24 of Akron, Ohio, Herschel Kriger, 215 First National Bank Building, Canton, Ohio.

Are there any further appearances?

I hear none.

The Official Reporter makes the only Official Transcript of these proceedings, and all citations in briefs and arguments must refer to the Official Record. The Board will not certify any transcript other than the Official Transcript for use in any court litigation.

Proposed corrections of the transcript should be submitted either by way of stipulation or motion, to the Trial Examiner for his approval.

(4) All matter that is spoken in the hearing room while the hearing is in session is recorded by the Official Reporter, unless the Trial Examiner specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, the request to go off the record should be directed to the Trial Examiner and not to the Official Reporter. There will be no off-the-record discussion of issues in this hearing.

Statements of reasons in support of motions or objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

It is preferable that exhibits be offered in duplicate. It is certainly more convenient for the Trial Examiner if he has a copy of the exhibits before him at the time they are offered. If it is at all possible, I would appreciate it if you would offer them in duplicate, but if it is a book or a document and you do not have the duplicate, if you will call that to my attention, why, it will be all right.

Any party shall be entitled upon request to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Trial Examiner may himself ask for oral argument, if at the close of the hearing he believes (5) that such argument would be beneficial to the contentions of the parties and the factual issues involved.

Any party shall be entitled upon request made before the close of the hearing to file a brief or proposed findings



and conclusions, or both, with the Trial Examiner, who, before the close of the hearing, will fix the time for such filing.

Mr. Garver, if you are ready to introduce the formal papers, you may proceed.

Mr. Garver: Will you mark these for identification, please, as General Counsel's Exhibits 1-A through 1-I.

(Thereupon, the documents above-referred to were marked General Counsel's Exhibits 1-A through 1-I for identification.)

Mr. Garver: The reporter has marked for identification the various formal papers in this case:

General Counsel's Exhibit 1-A is the charge filed by Gamble Enterprises, Inc., on May 16, 1949, and docketed as Case No. 8-CB-23, naming as the labor organization American Federation of Musicians, Local No. 24.

As General Counsel's Exhibit 1-B, the affidavit of service in Case No. 8-CB-23, referring to the mailing of a copy of a charge to the American Federation of Musicians, Local No. 24, on May 17, 1949, and having attached to it return receipts issued by the U. S. Post Office Department.

General Counsel's Exhibit 1-C is an amended charge (6) filed in Case No. 8-CB-23 on November 17, 1949.

General Counsel's Exhibit 1-D is an affidavit of service in the same case being referred to, referring to a date of mailing of a copy of the amended charge to the American Federation of Musicians, Local No. 24, and such affidavit having attached to it a return receipt issued by the U. S. Post Office Department with respect to the delivery of the item referred to.

General Counsel's Exhibit 1-E is the complaint in the matter of American Federation of Musicians, Local No. 24 of Akron, Ohio, and Gamble Enterprises, Inc., Case No. 8-CB-23, such complaint being dated January 3, 1950.

General Counsel's Exhibit 1-F is a notice of hearing in Case No. 8-CB-23, which is also dated January 3, 1950.

General Counsel's Exhibit 1-G is an affidavit of service of the charge, amended charge, the complaint and notice of hearing in the same case, and refers to a date of mailing as of January 3, 1950, and has attached to it two return receipts with respect to the delivery of the items referred to.

General Counsel's Exhibit 1-H is the answer of the respondent, American Federation of Musicians, Local No. 24 of Akron, Ohio; which was filed in Case No. 8-CB-23.

And General Counsel's Exhibit 1-I is a copy of the telegram sent to the various parties on March 9, 1950, indicating a change of time from an earlier time this morning until 2:00 (7) o'clock this afternoon.

I now offer in evidence General Counsel's Exhibits 1-A through 1-I, and I hand them to the parties for their examination.

(Documents referred to handed to the parties.)

Trial Examiner Spencer: Is there an objection to the offer?

(No response.)

The Exhibits are received without objection.

(The documents heretofore marked General Counsel's Exhibits 1-A through 1-I for identification, were received in evidence.)

Mr. Garver: Mr. Examiner, I note that the respondent is somewhat variously referred to in minor respects. I take it I may move that all the papers be amended to show the name of the respondent as American Federation of Musicians, Local No. 24 of Akron, Ohio?

And I will say an explanation that in some instances the name Akron, Ohio, does not appear on the documents; is that correct?

Mr. Kriger: That's right.

Trial Examiner Spencer: Is there any objection to the motion?

Mr. Kriger: No objection.

Trial Examiner Spencer: Motion granted.

Mr. Garver: Mr. Examiner, with respect to the nature (8) of the operations of the employer in this matter, which is referred to in Paragraphs 1, 2, and 3 of the complaint, there has been prepared a stipulation which is in typed form, and I will ask the reporter to mark that as General Counsel's Exhibit No. 2.

(Thereupon, the document above-referred to was marked General Counsel's Exhibit 2 for identification.)

Mr. Garver: And it is my understanding that that stipulation which describes the operations of the employer is to be entered into, and I take it we may simply receive this Exhibit No. 2, General Counsel's Exhibit No. 2 in connection with that stipulation; in other words, the stipulation is that General Counsel's Exhibit No. 2 correctly recites the facts.

Mr. Kriger: With a minor exception.

Trial Examiner Spencer: Do you want to take a brief recess while you discuss the stipulation?

Mr. Kriger: Yes.

Trial Examiner Spencer: Very well. We will be in recess.

(Recess had.)

Trial Examiner Spencer: Back on the record.

Mr. Garver: Mr. Examiner, so that the record may be clear, may I point out that there are two corrections being made on General Counsel's Exhibit No. 2, in the nature of (9) deletions, and I am just physically marking them out in ink, and both Mr. Kriger and I are initially at that point to indicate the omissions.

I would like also to state for the record that as I have discussed with Mr. Kriger, this stipulation is not to be inclusive. There are a few minor or perhaps maybe major items to be brought out. It is intended that this will eliminate a lot of the material.

Mr. Kriger: Yes.

Mr. Garver: But I don't mean to foreclose Mr. Kriger, and he doesn't mean to foreclose me with respect to certain matters that I may wish to offer.

Trial Examiner Spencer: At least the matter that is contained in this exhibit is stipulated to?

Mr. Garver: That's correct.

Mr. Kriger: That is correct, sir.

Trial Examiner Spencer: Very well.

The exhibit is offered, is it?

Mr. Garver: General Counsel's Exhibit No. 2, which has certain corrections made physically and initialed by Mr. Rappaport, Mr. Kriger, and myself, is now offered in evidence.

Trial Examiner Spencer: Is there an objection?

(No response.)

Mr. Garver: Together with the stipulation, of course.

Trial Examiner Spencer: The exhibit is received without (10) objection.

(The document heretofore marked General Counsel's Exhibit 2 for identification, was received in evidence.)

Mr. Garver: I note that the matter of commerce is denied and contested by the respondent's answer.

At this time I intend to pass that subject, however, because the material to be elicited in addition to that already agreed to may be more conveniently brought out from witnesses who will be on the stand.

Trial Examiner Spencer: Very well.

Mr. Kriger: Is that the bylaws and constitution?

Mr. Garver: That is—

Trial Examiner Spencer: Now, gentlemen, if you want to talk off the record, ask for a recess.

I expect the reporter to take down everything that is said in the hearing room. If counsel want to confer, it's very simple for you to ask the Trial Examiner for a recess.

The reporter doesn't know what to take down and what not, if you start this matter of having conferences among yourselves.

Mr. Garver: I certainly will adhere to your instructions. I just want to note that I was handing Mr. Kriger these documents that I would like the reporter now to



mark for identification. I would like to have marked for identification as (11) General Counsel's Exhibit 3 the constitution, bylaws, and policy of the Federation, of the American Federation of Musicians of the United States and Canada for 1948. That is so designated on its cover.

(Thereupon, the document above-referred to was marked General Counsel's Exhibit 3 for identification.)

Mr. Garver: And I would like to have marked for identification as General Counsel's Exhibit No. 4 the constitution and bylaws, wage scale and directory of Local No. 24, Akron, Ohio, and which bears on its cover the notation, "Date of issue, March 1, 1949. These are both printed copies.

(Thereupon, the document above-referred to was marked General Counsel's Exhibit 4 for identification.)

Mr. Garver: I offer them together with the stipulation that these are true and correct copies of such original documents as they purport to be.

Trial Examiner Spencer: Is there an objection?

Mr. Kriger: No objection.

Trial Examiner Spencer: They are received without objection.

(The documents above-referred to having previously been marked General Counsel's Exhibits 3 and 4, were received in evidence.)

(12) Mr. Garver: I take it it is implicit in the stipulation that those were operative during the periods indicated in the documents?

That is rather implicit, isn't that so?

Mr. Kriger: I might say that in entering into the stipulation for the admission of these documents, I am not conceding the relevancy, the materiality, or the applicability of them; merely that those are the documents.

Mr. Garver: And as I stated, that they were in existence during the period for which they purport to be in existence?



Mr. Kriger: I am satisfied with that statement.

Trial Examiner Spencer: All right.

Mr. Garver: Mr. Teagle, will you come up here and take the stand, please.

LOGAN O. TEAGLE, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner Spencer: Speak up plainly and distinctly, please.

DIRECT EXAMINATION:

Q. (By Mr. Garver) Will you state your name, please? A. Logan O. Teagle.

Q. And what is your address, Mr. Teagle? A. 608 West Market Street, Akron, Ohio.

Q. And what is your position with the respondent in this (13) matter, Local No. 24 of the American Federation of Musicians of Akron, Ohio? A. Secretary and business manager.

Q. And how long have you had that position? A. Since 1926.

Q. Were you connected with that organization prior to that time in any formal way, by way of a position? A. Yes, I was treasurer from 1920 until 1926.

Q. Well, since 1926, what has been the area in which you have performed your duties as secretary and business manager? A. You mean the jurisdiction?

Q. Yes. A. Well, it takes in all of Summit County, with the exception of the extreme northern part. I would describe it as Route 82 north, is not our jurisdiction in Summit County.

Q. Of course, included in Summit County is the City of Akron? A. That's right.

Q. Now, in general, what have been your duties since 1926? A. Secretarial duties and business manager.

Q. Can you explain that a bit more fully? In connection with your position, have you had occasion to be in

touch with various employers that employ musicians that are members of the union? A. That's right.

(14) Q. And would you also be in touch and in contact with the various theatres in this community?

I am not trying to—I am just trying to have the Examiner have the complete picture of your function and work. There is no controversy about this. A. In some cases only.

Q. Will you tell us what your duties are as secretary? A. Well, I think the best thing would be to read it out of the bylaw book.

Q. Do you have occasion to negotiate with employers concerning the terms of employment, or any grievances that come up? A. Occasionally.

Q. Were you acquainted with representatives of the Palace Theatre during the last five years here in Akron? A. Not all of them, no.

Q. From time to time have there been members of your organization that have been employed at the Palace Theatre during the last four or five years? A. I believe so, yes.

Q. Were you acquainted with the fact that you had a steward at the Palace Theatre, several stewards, representing the men at the various times when there have been men on the payroll of the theatre, members of your organization? A. Our laws do not provide for any steward.

(15) Q. Will you tell us whether or not you knew about the practice which was prevalent at the theatre, say in 1947, by which payment was made to a group of musicians that were members of your organization? A. I don't know anything about payments.

Q. Who would know about payments to any members of your organization, if any of them had been made to them by the theatre, as part of their work as musicians? A. I don't know, unless it would be the leader of the orchestra.

Q. Do you know whether any members of your organization were employed at the theatre, the Palace Theatre, during 1947? A. I don't know what members were em-

ployed. I do know of one leader, I believe, that was employed there.

What members he used, I do not know.

Q. What was the name of that one leader? A. Mark Houser.

Q. About when was the last time of employment of Houser at the theatre, that you know about?

I don't mean to try to explore your memory. Was it some time during 1947? A. I believe so, yes, some time in 1947, the early part of '47.

Q. What is the practice, or what was the practice at that time of your organization here locally with respect to the (16) payment by members of the union to the local based upon their earnings? Was there some procedure of that kind?

Mr. Kriger: I object to that. I can't see where that is pertinent at all.

Trial Examiner Spencer: Will you read the question, please, Mr. Reporter:

(Question read.)

Mr. Garver: It is a preliminary question, Mr. Examiner.

Trial Examiner Spencer: He may answer as to whether there was a procedure of that general character as described by counsel, if he recalls.

The Witness: The only thing I can remember is they paid a local one per cent tax. We collected either one or two per cent at that time. We collect a tax on all local engagements.

Q. (By Mr. Garver) In other words, if a musician was receiving any pay from the Palace Theatre in 1947, he would turn into the local one per cent of such pay, or approximately something of that sort; is that right? A. Based on whatever the local scale might be, yes.

Q. When you say based on whatever the local scale might be, wouldn't it be based upon his pay? A. Not necessarily. Some musicians receive over scale.

Q. Well, was it one per cent based upon what the man got in his pay, or was it based upon his scale? I don't quite

follow (17) you. A. We collect one per cent tax on the local scale; not what the man receives. If he receives more than the scale, we don't collect that.

Q. Would there be a record of any such payments made in 1947 to the local? A. Yes.

Q. Is that record available? A. It's a tax record. Yes, I have it.

(Witness hands documents to Mr. Garver.)

Mr. Garver: Thank you.

Q. (By Mr. Garver) Mr. Teagle, if we arrange to have a photostat made of this page, and return this page to you, I take it we may use it for the purposes of this hearing at this time?

I would like the reporter to mark this page which you have shown me, which is headed, "Palace Theatre," I would like to have that marked as General Counsel's Exhibit No. 5.

Can we take that out of the book temporarily?

The Witness: Yes.

Mr. Garver: Is that the only page referring to the Palace Theatre in this book that you have here?

The Witness: That's right.

Mr. Carver: Can we take that one page out?

The Witness: That's right.

(18) Mr. Garver: I will ask the reporter to make this document, which is headed, "Palace Theatre," as General Counsel's Exhibit No. 5 for identification.

(Thereupon, the document above-referred to was marked General Counsel's Exhibit 5 for identification.)

Q. (By Mr. Garver) Mr. Teagle, let's see if we can understand this document:

Over to the left of the page in the column which says "name of leader" at the top is marked, "Houser." That's the leader you referred to? A. That's right.

Q. And, of course, all the other lines are ditto, and I take it he is the leader for each line? A. Down to here (indicating).

Q. Then there is another leader by the name of Ange Lombardi; is that correct? A. That's right.

Q. And likewise on the back of the page the same leader again, Ange Lombardi; is that right? A. That's right.

Q. Now, in the "Date Paid" I take it that is the date paid column, the second column? A. This is the date paid to the office.

Q. You mean paid by the leader to the local, the union office; (19) is that right? A. That's right. That is the tax.

Q. Let's take one line, so that we may follow it through:

On the first line it says, "Mark Houser," and then in parentheses it says "Ray Kinney." Now what would the Ray Kinney refer to? A. This would be the shows that they worked.

Q. In other words, right down the line on each line there is in parentheses such names as Casa Loma, V. Monroe—would that be Vaughn Monroe? A. As they reported these leaders to me, I put their names in here, Lombardi or Houser, is that what you mean?

Q. In this day and age it's almost recognizable that, I take it, where it says D. Ellington and Ted Weems, and Prima, I take it those are names— A. Those are the shows that the leader reported to me that the orchestra worked.

Q. Those names refer to names of various bands? A. I don't know whether it's bands or shows.

Q. I take it in some instances it could be a show, but in other instances it could be a band; is that right? A. That is possible.

Q. For example, where it says Dorsey, I take it that is the well known Tommy Dorsey band? A. In other words, I wrote down these just as the leader (20) paid the local tax to me at the office.

Q. Now, getting back to the first line where it says Ray Kinney, I take it that means a show, or the name of the Ray Kinney band? A. Yes, as reported to me.

Q. And the payment would have been made on that first line, on March 9, 1945? A. That's right.



Q. Now, the next column shows number of weeks—  
A. Number of sessions or weeks.

Q. The "S" means sessions; is that right? A. That's right.

Q. For example, on the first line where it says "4" under the "S," by four sessions what would it mean, four in a day or four in a week? A. It would possibly be four days.

That's in error. It should be weeks or days instead of an "S."

Q. As a matter of fact, at that time that is what they considered a week for the show, would be four days, ordinarily; isn't that so? A. No. It would be four days, it would be entered as four days, and not under weeks.

Q. Under the "S" that would mean four days? A. That's right.

(21) Q. Now, in the column which says, "Ending," 1-8-45, that would mean it ended on January 8, 1945; is that right? A. If he reported it to me that way, it would mean just that.

Q. That's what this record would indicate? A. Yes.

Q. In other words, when it says, four sessions, and then it says 1-8-45, that means four days, ending on about 1-8-45? A. That is the way it was given to me. That is the way the entry was made.

Q. In the next column where it says, "Number of men, 9," I take it that means there were nine men involved in that particular item which is being described? A. That is the number of men that the leader reported worked the show.

Q. And then in the next column where it says, "Salary, 340," I take it that means that the salary paid to those nine men including the leader would have amounted to \$340; is that right? Or at least that is what is being reported to the local? A. That would be the scale of the local. That is the scale of the local, prevailing scale, prevailing wage scale of the local.

Q. Of course, they would have been paid at least that much? I mean they wouldn't have been paid less?

(22) When you spoke about the scale— A. I don't know what they were paid. I just take this from the leader's statements.

Q. In the next column where it says, "Tax, \$6.80," I take it that is the tax on the \$340? A. That would be two per cent tax on the local scale.

Q. Paid to the local? A. Paid to the local by the leader.

Q. Now, were you performing the work as secretary during the periods indicated on this document?

There is reference to the year 1945, and then it says 1946, then it goes into 1947, up through July 2, 1942, is that right, on the back of the page? A. Yes, I was secretary.

Q. Can you recognize any of those bands in parentheses as ones that you would know about?

Which ones would you recognize? I mean that V. Monroe, that is the Vaughn Monroe band; is that right?

A. We all know Vaughn Monroe.

Q. I just wanted to get the reporter here to know it.

So that that means that Mark Houser was the leader of the nine men shown in that column working at the same time that V. Monroe band were there, or at least was getting paid that week, at the same time the V. Monroe band was at the theatre; is that correct? (23) A. That's his statements to the office when he paid his tax.

Q. And you were the secretary at that time? A. That's right.

Q. Would you know whether the nine men referred to on that line, where the Vaughn Monroe is referred to, whether they were actually at work in any respect in the theatre during those four days? A. Well—

Q. That is, that is referred to on the document? A. No.

Mr. Kriger: Objection.

Trial Examiner Spencer: What is the objection?

Mr. Kriger: The objection is that if the purpose of the question—and I assume it is—is to show a violation of the Act, the violation is in the dim past, quite a long time before the permissible time for showing anything to do with these proceedings.

As I understand it, the question is addressed to something that happened in 1945.

Mr. Garver: That's right, 1945, 1946

Mr. Kriger: The time when even the act was not passed yet.

Trial Examiner Spencer: Have you finished?

Mr. Kriger: Yes.

Trial Examiner Spencer: Overruled. You may answer the (24) question.

Mr. Garver: I think he answered. May I hear the answer again, if there is one?

(Record read by reporter.)

Q. (By Mr. Garver) Mr. Teagle, I don't want to be misunderstood:

As I understand the question and the answer, you mean to tell us that these nine men shown on the Vaughn Monroe line on this document were not at work in the theatre, although the record shows that they were taxed on pay received; is that right? A. Well, will you read the first question again, please?

(Record read by reporter.)

Trial Examiner Spencer: That's an ambiguous answer. I wouldn't know what it meant.

Mr. Kriger: I think it is very clear.

Mr. Garver: Let's not have any discussion which suggests the situation to the witness.

Trial Examiner Spencer: When you read the transcript, you will see it can mean one or two things. It doesn't necessarily mean one thing.

I think you better make it a little clearer.

Mr. Garver: Yes, that is the reason I repeated it.

Q. (By Mr. Garver) I want to know if these nine men were actually performing any work as musicians in the theatre (25) during the week that they are shown as being taxed on your records, the Vaughn Monroe week? A. I wouldn't know, because I might be out of town for three or four days, or something like that. Those tax reports are taken from the leader's statements when he makes the payment.

Q. I can appreciate that you might be out of town. I am out of town so much myself.

But, this is really a very simple matter that I am asking you about:

Here is week after week in 1945, 1946, and 1947, shown on your records. Now, my question is whether generally, or from what you know, whether these people, the nine men repeatedly shown as being taxed, were they working during those days that the tax is being shown for them?

Mr. Kriger: Objection, and to save the wear and tear on counsel's throat, will you show a continuing objection to the entire line of questioning?

Trial Examiner Spencer: Certainly, I will give you a continuing objection on your ground that this is a period pre-dating the Taft-Hartley Act, and I have overruled the objection.

He may answer.

Q. (By Mr. Garver) Mr. Teagle, I realize that you are a witness and not a lawyer, and I can ask you all kinds of (26) things, but that isn't the idea. I just want you to explain to the Examiner what was the practice during this period covered by your record? You are really an expert. You were secretary of the organization.

Just tell us what was the practice as demonstrated during those years?

It is going to come out; we might as well have it. A. The only practice is that I would see the leader, who would bring in the one per cent tax, telling me that nine men worked an engagement at the Palace Theatre. He would pay the tax on the same based on the local scale. That's all I can tell you.

Q. What is your knowledge as to whether those people were working? A. I don't know, because I didn't go over there. I didn't check those shows that came in.

Mr. Garver: I offer in evidence General Counsel's Exhibit No. 5.

Mr. Kriger: Objection.

Trial Examiner Spencer: What is your objection?

Mr. Kriger: The objection is the same, that the information contained thereon predates the Act.

Trial Examiner Spencer: I think it is obvious that he is simply putting this in as background, and to show a practice existing prior to the Taft-Hartley Act, and for that reason (27) I overrule the objection.

Mr. Kriger: Exception.

Trial Examiner Spencer: The document is received.

(The document heretofore marked General Counsel's Exhibit 5 for identification, was received in evidence.)

Q. (By Mr. Garver) Were you a member of the executive board of the union during the years referred to, 1945, 1946, and 1947? A. Yes, sir.

Q. How many members were there on that executive board, approximately? A. Nine.

Q. Would it have been possible for a leader to turn in a tax based upon receipts, where men actually did not work in any of the theatres or at any location?

Would the executive board have tolerated that kind of thing? A. I can't speak for the executive board.

Q. What is the answer with respect to whether the—I will withdraw that.

Mr. Garver: I will ask the reporter to mark for identification a series of theatre payrolls of the Palace Theatre, each headed "Theatre Payrolls."

I will ask him to mark as General Counsel's Exhibit No. 6 (28) a payroll record for January 22, 1947. That is two pages.

(Thereupon the document above referred to was marked General Counsel's Exhibit 6 for identification.)

Mr. Garver: A payroll record for January 29, 1947, as General Counsel's Exhibit No. 7, likewise two pages.

(Thereupon the document above referred to was marked General Counsel's Exhibit 7 for identification.)



Mr. Garver: As General Counsel's Exhibit No. 8, the payroll for February 26, 1947, also two pages.

(Thereupon the document above referred to was marked General Counsel's Exhibit 8 for identification.)

Mr. Garver: As General Counsel's Exhibit No. 9, two pages, being the payroll for March 26, 1947.

(Thereupon the document above referred to was marked General Counsel's Exhibit 9 for identification.)

Mr. Garver: And as General Counsel's Exhibit No. 10, two pages of the payroll for April 16, 1947.

(Thereupon the document above referred to was marked General Counsel's Exhibit 10 for identification.)

Mr. Garver: And as General Counsel's Exhibit No. 11 for identification, two pages of the payroll for April 30, 1947.

(Thereupon the document above referred to was marked General Counsel's Exhibit 11 for identification.)

(29) Mr. Garver: And as General Counsel's Exhibit 12, two pages of the payroll for July 2, 1947.

(Thereupon the document above referred to was marked General Counsel's Exhibit 12 for identification.)

Mr. Garver: I will hand these to the parties for their examination, and I take it it is the sort of thing we can probably stipulate about.

May we stipulate that these are original records of the theatre showing various payments made to the employees listed on the documents? May that stipulation be agreed to?

Mr. Kriger: Without conceding the relevancy or materiality or the applicability of the documents, we will concede that those are the documents in question.

Mr. Garver: And that they show the employees to whom payments were made, the persons to whom payments were made, and the amounts, and so forth?

Mr. Kriger: Yes.

Mr. Garver: I offer in evidence, in accordance with that stipulation, General Counsel's Exhibits 6 to 12, inclusive.

Trial Examiner Spencer: I understand you object to their receipt in evidence?

Mr. Kriger: Yes.

Trial Examiner Spencer: Objection overruled. The exhibits are received as offered.

(30) (The documents heretofore marked General Counsel's Exhibits 6 through 12, inclusive for identification, were received in evidence.)

Mr. Garver: So that it may be clear on the record, I want to point out that these records will tie in with Counsel's Exhibit 5, which was the tax on the salaries, and it will likewise show the persons to whom payment was made, the nine men, and so forth, and the names of the leaders all the way through.

Q. (By Mr. Garver) By the way, did you go to the theatre during 1945, 1946, and 1947? A. I wouldn't remember.

Q. Did you ever see any of these bands play at the Palace Theatre, that are referred to on General Counsel's Exhibit No. 5? A. Not that I remember.

Q. Directing your attention to 1947, that was during the summer of that year, or perhaps last summer, did you know Mr. Ron Gamble? Did you become acquainted with him at that time? A. I don't remember when I first met him.

Q. Well, Mr. Ron Gamble, of course, you know is the manager of the Palace Theatre here in Akron, is that so? A. Yes, sir.

Q. And I take it you became acquainted with him at some time; (31) you are acquainted with him now, and you became acquainted with him? A. I don't remember how we became acquainted.

Q. Aside from that, I want to direct your attention to conversations that you had with Mr. Ron Gamble in 1947 with respect to the Ray Eberle show that was being scheduled, and with respect to the work of the musicians, that you are the secretary of; do you remember such conversations? A. No, sir.

Q. Do you remember any conversations you had with Mr. Gamble, Mr. Ron Gamble?

Mr. Kriger: Objection. That's awfully vague.

Trial Examiner Spencer: It's a preliminary type of question.

The Witness: It's back too far. I can't remember it.

Q. (By Mr. Garver) Mr. Teagle, I want you to go back and tell us how the question came up between you and Mr. Gamble initially, and your discussions with him, about having members of your organization go to the theatre to play or to work, or whatever it might be. A. I don't remember those discussions you mention.

Q. Do you remember any conversations you ever had with Mr. Gamble?

You have met with him and talked about this thing with him for the last couple of years; is that so? (32) A. He probably came into the office, but I don't remember what the discussions were back two years ago.

Q. Did you ever have any discussion with him in his office? A. Not that I remember.

Q. What were some of the first discussions you had with him in connection with your work as secretary of the union? A. As I mentioned before, I don't remember when I first met him.

Q. Have you had any discussions with Mr. Gamble, as the secretary? A. Yes, he has been in the office.

Q. Mr. Teagle, I don't want to get into an unnecessary controversy. I want you to tell us the story of what happened initially, what your position was, and what you wanted to accomplish; what Mr. Gamble's position was, and what your discussions were.

Start back at any point you want. Is that a fair question? A. I don't remember those discussions.

Q. You don't remember ever having talked to Mr. Gamble? A. Yes, but I don't remember what the discussions were about.

Q. What do you remember their being about? A. I wouldn't want to say, because I don't remember what they were about.

(33) Q. You don't remember any discussions with Mr. Gamble about the musicians working at the Palace Theatre, and your obtaining work for them, and what you should do in the event that traveling bands should come in, and that sort of thing? Don't you remember that? A. I don't remember.

Q. Did you ever talk to Mr. Gamble about having the men, the musicians, work in the pit when there would be a traveling band brought in to perform at the theatre? A. I didn't understand the question.

Q. Did you ever have conversations with Mr. Gamble about the musicians having to play in the pit when the theatre would bring in traveling bands from out of the city? A. I don't remember such a conversation, no.

Q. Have you had occasion to become familiar with the various rules and regulations of the American Federation of Musicians during the time you have been secretary? A. Some of them.

Q. What is your knowledge of the rule in respect to traveling bands coming in to play in a particular city like Akron? Is there any rule that would cover a situation like that? A. I don't know. I would have to look it up in the National Bylaws.

Q. All right. That's Article 18, Section 4. See if that's the rule that you have in mind? (34) That's on page 109 of General Counsel's Exhibit No. 3. Do you want to read that out loud? It's just a short rule. A. Section 4?

Q. Yes. A. "Traveling members cannot, without the consent of a local, play any presentation performances in its jurisdiction unless a local house orchestra is also employed."

Q. Have you ever had occasion, as secretary here in Akron, to consider the problem of obtaining employment for the local orchestras when a traveling band would come in? A. Can you clarify your question?

Q. If a traveling band was scheduled to come to any theatre in this city during 1945, 1946, and 1947, would that have been brought to your attention? A. Not necessarily, unless a contract would be filed with the office.

Q. Which contract? A. Well, a contract possibly between the theatre and the—

Q. The traveling band? A. The traveling band leader.

Q. In other words, during those years when a traveling band was to come to Akron, an actual copy of the contract making that arrangement would be on file with you; is that right? A. Not necessarily. I don't think they have to file a contract. (35) But, we do receive some contracts from the traveling bands.

Q. Who would you receive the contract from? The band itself? A. No.

Q. Or from your office? A. It would probably be from the booking agent.

Q. Well, this rule here talks about the fact that the traveling members cannot play unless a local house orchestra is also employed. Did you ever have occasion to try to enforce that rule? A. Not that I remember.

Q. You don't remember about it? A. That's a Federation law.

Q. Isn't this the rule you talked about, that you have in mind? A. We have no jurisdiction to enforce Federation laws, not the local.

Q. Isn't it true that the locals are bound by the Federation laws? Don't you know that, as secretary? A. That may be true.

Q. Then the locals are bound by the laws of the National? A. I said we do not enforce the Federation laws.

Q. All I have asked you is whether you ever had occasion to attempt in any way to enforce that particular provision that you read out loud? A. Not that I remember, no.



(36) Q. Did you ever have occasion to notify Mr. Petrillo's office of any irregularity in connection with the procedure of the traveling band coming into your jurisdiction?

Mr. Kriger: Objection.

Trial Examiner Spencer: He may answer.

The Witness: Will you read the question?

Trial Examiner Spencer: Will you read the question back to him, Mr. Reporter?

(Question read.)

A. Not unless I would think that the traveling band was violating some Federation law, such as traveling too far in 24 hours, or something like that.

Q. (By Mr. Garver) How would that be brought to your attention? I mean, would you investigate a thing like that? A. The contract. The contract might say they jump from New York to Akron. They are not permitted to jump that far in 24 hours by bus.

Q. What are some of the other things you would investigate when a traveling band would be coming to town?

You would check the contract; is that right? A. If we got a contract we usually look over a contract, yes.

Q. Check the rates? A. We don't make those rates. They are not local rates. They are traveling rates.

(37) Q. Mr. Teagle, during the years that you have been secretary—I believe you said since 1926—have you had any other kind of occupation other than your work and services in connection with the Musicians Union? A. Since 1926?

Q. Yes.

I am not looking for some week or day that you did something else, but has that been your principal work that you have been doing? A. It was part-time work for a while during that period.

Q. Which period? A. I can't exactly remember what years.

Q. Well, take 1945 and 1946 and 1947 and last year and this year, has that been the principal work you have

been doing, or do you have some other kind of work? A. No, it has been full-time during those years.

Q. Well, let's see, did you have an experience where you did find that a traveling band had traveled too long a distance before coming to your city?

I don't quite follow that reference that you made. Will you explain that? A. You asked, if I would check or notify the National office, didn't you?

Q. Yes, A. Of a violation?

(38) Q. Yes, A. And I said if I would find that some traveling band had made a jump from New York to Akron, in a case like that I would report it to the National office.

Q. When you say a violation, a violation of what? Your local bylaws, or what? A. Your National bylaws.

Q. So that if there were any violations of the National bylaws that would come to your attention, what would you do, send a letter to the National office, or a wire, or pick up the phone, or how do you handle that? A. Well, that all depends.

Mr. Garver: I will have the reporter mark as General Counsel's Exhibit No. 13 a copy of a telegram dated November 18, 1947, from Mr. James C. Petrillo to the General Artists Corporation, referring to the Ray Eberle show.

I offer this in evidence together with the stipulation that it is a true and correct copy of such a wire which was sent from Mr. Petrillo's office to the General Artists Corporation, on or about the date indicated.

Trial Examiner Spencer: Do you so stipulate, Mr. Kriger?

Mr. Kriger: I stipulate only that the telegram is what it purports to be, without any concession as to its materiality or admissibility.

Mr. Garver: I don't know if I was clear. It's agreed (39) that there was such a wire sent.

Mr. Kriger: No, it's agreed that if there was a wire sent, that's a copy of it. If you prove that there was one sent, I won't make you bring in Western Union to prove it.

Mr. Garver: We are probably in agreement. Probably I just don't understand.

Mr. Kriger: We won't concede that there was such a wire sent. I don't know anything about it. If you can prove there was such a wire sent, then I will not require you to bring in the Western Union people to establish the contents of the wire.

Mr. Garver: If we bring in the Western Union wire, we won't need this copy.

Mr. Kriger: I mean that's as far as we are willing to stipulate. We don't know anything about the existence of such a wire.

Trial Examiner Spencer: Do you want me to reserve ruling?

Mr. Garver: Naturally I am going to withdraw the offer. I withdraw the offer until we come to some understanding about it.

(General Counsel's Exhibit 13 was withdrawn.)

Mr. Garver: I will ask the reporter to mark for identification as General Counsel's Exhibit 14 this letter.

(Thereupon, the document above referred to was marked General Counsel's Exhibit 14 for identification.)

(40) (By Mr. Garver) Mr. Teagle, I hand you what has been marked for identification, as General Counsel's Exhibit No. 14, a letter from you—I take it that's your original signature on there, is that correct? A. Yes, sir.

Q. Tell us what that letter is about, and what caused it to be sent?

Mr. Kriger: What is the date of that?

The Witness: February 24, 1949.

Well, possibly Mr. Gamble asked to appear before the Board.

Q. (By Mr. Garver) You don't know what that was about? A. He has been in the office a few times. I don't know what this specific case would be about, no. It doesn't mention it.

Q. You do not know what led to that letter? A. No.

Q. But that is your signature on the document?

A. That's right.

Q. And you sent such a letter? A. That's right.

Mr. Garver: I offer in evidence General Counsel's Exhibit No. 14.

Trial Examiner Spencer: Is there any objection?

Mr. Kriger: No objection.

Trial Examiner Spencer: It may be received.

(41) (The document heretofore marked General Counsel's Exhibit No. 14 for identification was received in evidence.)

Mr. Garver: I will ask the reporter to mark as General Counsel's Exhibit No. 15 a copy of a letter dated April 22, 1949, from Mr. Rappaport, Counsel for the theatre, to Mr. Teagle.

(Thereupon, the document above-referred to was marked General Counsel's Exhibit 15 for identification.)

Q. (By Mr. Garver) Will you look that over and tell us if you recall receiving such a letter from Mr. Rappaport?

Before you answer that question, I will also hand you what will be marked for identification as General Counsel's Exhibit No. 16, a copy of the letter dated April 26, 1949, from you, Mr. Teagle, to Mr. Rappaport, apparently in reply to the other letter.

Now you can look them both over.

(The document above-referred to was marked General Counsel's Exhibit No. 16 for identification.)

A. Well, I presume these are exact copies. I wouldn't want to say definitely unless I saw my own letter.

Q. I won't burden you with that.

Do you recall letters containing the contents such as (42) you are reading there? A. I believe so, yes.

Q. I direct your attention to the letter from Mr. Rappaport, the second paragraph, where he says, "We are informed that you require the Palace Theatre to employ an orchestra composed of your members whenever a traveling band is engaged by that theatre for appearance

on its stage, which band is, of course, composed of union musicians. In the alternative, you require the operators of the theatre to pay your members the same amount even though they are not actually used."

Do you recall reading that and noting that material?

A. As near as I can remember it.

Q. And then, of course, you answered that letter with your letter of April 26, which has been marked for identification; is that right? A. That's right.

Q. Was that the situation that was existing as Mr. Rappaport described it in the paragraph I read to you?

Mr. Kriger: I object to that.

Q. (By Mr. Garver) What was your answer? A. No.

Trial Examiner Spencer: Did you make an objection?

Mr. Kriger: I did make an objection, but the question was answered.

Trial Examiner Spencer: Do you withdraw the objection?

(43) Mr. Kriger: I withdraw the objection.

Trial Examiner Spencer: All right.

Q. (By Mr. Garver) Will you explain what was the situation? You can take the letter and look at it and tell us in what respect that paragraph does not correctly recite the situation?

Tell us what your understanding of it was at that time; tell us that situation in any way you want. A. He says, "We are informed that you require the Palace Theatre to employ an orchestra."

Q. What? A. He says, "We are informed that you require the Palace Theatre to employ an orchestra composed of your members."

Q. All right. Was that true? A. No.

Q. What wasn't true? A. It wasn't true.

Q. Weren't you making any effort to have the theatre employ members of your orchestra at that time? A. Negotiations.

Q. Negotiations about what? A. Employment of musicians.



Q. Then there were some efforts on your part to have the theatre employ your musicians; is that right? A. That's right.

Q. What were they supposed to do? (44) A. Work.

Q. When?

Did you have anything to do with those negotiations?

A. Yes. We have had negotiations in our office.

Q. All right.

Now, what was the situation? You received this letter from Mr. Rappaport. He states the situation as he understands it; was that correct? A. No.

Q. In what respects was it incorrect? A. We are still negotiating, as far as we are concerned.

Q: It says here, "We are informed that you require the Palace Theatre to employ an orchestra composed of your members whenever a traveling band is engaged by that theatre for appearance on its stage."

Was that true? Were you trying to have them employ your people when there was a traveling band? A. We were trying to reach an agreement with them.

Q. What was the agreement that you wanted on that subject, of what your people should do when there was a traveling band?

Let me help you out, if I can:

In your answer, General Counsel's Exhibit 16, you said, and I am quoting your language, "It is my personal belief that some action will be taken by said Board, and we will notify you accordingly."

(45) What was the question that you had before the Board at that time? What was the question? A. It was possibly in answer to his letter there.

Q. You didn't deny that he had recited the situation correctly in the letter, did you? You didn't take issue with him, did you? You just said, "We are going to consider that matter," isn't that right? A. We always negotiate.

Mr. Garver: I offer in evidence General Counsel's Exhibit No. 15 and General Counsel's Exhibit No. 16.

Trial Examiner Spencer: Is there any objection?

Mr. Kriger: No objection.

Mr. Garver: I take it we are agreed that they are true and correct copies of such letters as they purport to be copies of?

Mr. Kriger: I presume they are. I will look them over. If there is any question on that score, I will raise it.

Mr. Garver: Thank you.

Trial Examiner Spencer: The exhibits are received without objection.

(The documents heretofore marked General Counsel's Exhibits 15 and 16 for identification were received in evidence.)

Q. (By Mr. Garver) Mr. Teagle, is this the original of General Counsel's Exhibit No. 16 (indicating)? Does that (46) have your original signature on it, the document I have just handed you now? A. This is my signature, yes (indicating).

Q. In other words, the paper I am now holding is actually the original of General Counsel's Exhibit No. 16 that I showed you before; is that right? A. That's right.

Mr. Garver: Mr. Kriger, I take it I may substitute the original and have that marked as General Counsel's Exhibit No. 16?

Trial Examiner Spencer: I presume there is no objection. The substitution may be made.

Mr. Garver: In order that it may be clear, I will submit the document which was originally the copy as a duplicate.

Trial Examiner Spencer: Very well.

Mr. Garver: I will have the reporter mark as General Counsel's Exhibit No. 17 a typewritten document dated May 8, 1949, and bearing some initials in ink.

(The document above-referred to, General Counsel's Exhibit No. 17, was marked for identification.)

Q. (By Mr. Garver) Mr. Teagle, can you identify that as a document you have seen before, and are those your initials on the document? A. Yes.

Q. You wrote your initials on there yourself? A. It's initialed.

(47) Q. Will you tell us where that was prepared, and who was present, and how it was done? A. Well, if I remember correctly, Mr. Rappaport was in the office, that is, our office.

Q. Here in Akron? A. In Akron.

Q. On the date there, about May 8, 1949; is that right? A. That's right.

Q. Go ahead. A. And who was with him, I don't know. I believe Mr. Gamble, and I believe Mr. Dilley, and I believe Mr. Light.

Q. Let's see if we can find out who they are.

Mr. Dilley is another lawyer here in Akron? A. He is a lawyer, yes.

Q. And at that meeting was he representing the union? A. No, he was on the negotiating committee.

Q. For the union? A. For the union.

Q. And Mr. Light? A. President of the local. He was a member of the negotiating committee.

Q. This talks about a certain understanding that the parties reached as to what they would do; is that right?

A. No. If my memory doesn't fail me, I believe that this was made up, and I asked Mr. Rappaport at the time, I said, (48) "Now, this is not an agreement."

He said, "No. This is just an understanding, an understanding of what we are offering you, that is, the local."

So, I asked Mr. Dilley if I should initial it, and he said, "I don't see anything wrong with it."

Q. That was just a tentative understanding that was to be approved later; is that right? A. No. It was an understanding of what the Gamble Enterprises Company would offer the local.

Q. What is it the theatre wanted to do, as you understood it, at that time? A. Just what this says.

Q. What was your position? Was that agreement or that understanding acceptable to you at that time when you initialed it? A. No. It was just an understanding, what they agreed to offer us, that's all.

Q. What did you want at that time on that subject?

A. If I remember correctly, we were trying to negotiate with them for the employment of local musicians.

Q. You mean you initialed this, although it wasn't to be an understanding between you? A. It was only an understanding of what they would offer to the local.

Q. Well, what did the union want at that time?

(49) For example, there was a question of what should happen when a traveling band came in. What was the union's position as to what should take place when the theatre brought in a band from some place else? A. We don't control the traveling bands, not the local.

Q. Did you want to have work for your people when the traveling band came in? A. We were trying to reach some agreement with them that would give work to our musicians during the year.

Q. You were bargaining. What kind of work did you have in mind? Work on the stage, work in the pit? What was it? A. Work as musicians in their theatre.

Q. That's as far as your understanding of what you wanted to have done for your people? A. That's right.

Q. You didn't talk about it beyond that point? You didn't talk about whether or not you wanted them to play what is known as overtures or chasers, or what you wanted them to play? A. Not that I remember of. Customary work of a musician.

Q. Did you ever notify your National office as to whether or not you had been able to come to any understanding with the theatre here locally? A. I don't remember whether I did or not.

Q. If a traveling band would have come in before you had reached some understanding, would you have called that a (50) violation of your rules? A. Not necessarily, no.

Q. Do you know whether any traveling band has come into the theatre here since 1947, or since the latter part of 1947? A. I don't remember of any coming in.

Q. If any had come in, they would come to your attention; isn't that right? A. If we would receive a contract.

Q. And if any band would come in, you would check to see if any of your rules had been violated? A. Not necessarily, no.

Q. Why not necessarily? Isn't that what you have been doing? A. The leader usually checks conditions of a traveling orchestra, the local leader.

Q. And would he report any violations to you if you checked it?

You mean the leader would check the contract that's on file with you when a traveling band comes in? A. No. You ask if they check any violations.

Q. Suppose a traveling band would come into the theatre, would you check to see whether or not you had that contract? Would you check to see whether or not you had the contract on file, or whether or not you had received a contract? A. I don't recall that any law requires a traveling band to submit a contract, that is playing a theatre engagement.

(51) Mr. Garver: I offer in evidence General Counsel's Exhibit No. 17.

Trial Examiner Spencer: Is there any objection?

Mr. Kriger: No objection.

Trial Examiner Spencer: It is received without objection.

(The document heretofore marked General Counsel's Exhibit No. 17 for identification, was received in evidence.)

Mr. Garver: I will ask the reporter to mark for identification as General Counsel's Exhibit No. 18 a letter dated May 12, 1949, which appears to be an original from Mr. Teagle to Mr. Rappaport.

(Thereupon, the document above-referred to was marked General Counsel's Exhibit 18 for identification.)

Q. (By Mr. Garver) I will ask you if that's your signature, Mr. Teagle, and if you sent such a letter? A. That's right.



Mr. Garver: I offer in evidence General Counsel's Exhibit No. 18.

Trial Examiner Spencer: Is there any objection?

Mr. Kriger: No objection.

Trial Examiner Spencer: It may be received.

(The document heretofore marked General Counsel's Exhibit 18 for identification, was received in evidence.)

(52) (By Mr. Garver) Directing your attention to that letter, General Counsel's Exhibit No. 18, what subject matter were you talking about in that letter?

It uses the words, "Subject matter." It's your letter. What were you talking about? A. Negotiations relative to employment of local musicians in the Palace Theatre.

Q. In these negotiations were you in accord? Were you all in agreement about everything? A. You mean both sides?

Q. By the way, who was on the negotiating committee for your organization? A. Mr. Light.

Q. Yes? A. Mr. Dilley and myself.

Q. Were there ever any negotiating meetings held between the Palace Theatre and your union at which you were not present? A. Not that I know of.

Q. You are always present at the negotiating meetings? A. Well, not always.

Q. But you don't know of any at which you were not present; is that right? A. I don't know of any that I wasn't present in this specific case.

(53) Q. Were there ever any meetings at which Mr. Light was not present, at which you were present? A. That I can't remember.

Q. Were there ever any meetings, negotiating meetings, such as you are talking about, when Mr. Dilley was not present, but you were present? A. There may have been. I am not sure.

Q. As a matter of fact, you were the principal negotiator for your organization; isn't that right? A. Not necessarily. I was just one of three.

Q. But you were the one that was always there at every meeting? A. I believe I was.

Q. All right.

Now, did you and the theatre come to a complete agreement on every subject that was being raised between you? A. In what specific case?

Q. Well did you get together or didn't you get together? A. Yes, we have had negotiations, sure.

Q. Did you come to an agreement? A. We haven't reached any agreement.

Q. What were some of the things that you did not reach agreement on, anything that you didn't reach agreement on? A. The employment of our musicians.

Q. What was your position? What did you want? Did you ever (54) offer them anything in writing on that point? A. Not that I remember.

Q. Now, look, you met with them. What were you negotiating about?

You just sat there and said, "We want you to employ our musicians," and they said, "We don't know," or what was the nature of the discussion?

What did you want and what did they want? A. Here is what they want in this letter (indicating).

Q. The letter of May 8th? A. Not a letter, but the note.

Q. The document you initialed on May 8th; is that right? A. That's right.

Q. What was it you wanted that they wouldn't agree to?

I will withdraw that.

How many such meetings did you have? How often have you met with representatives of the theatre to talk about this question? A. You mean our negotiating committee?

Q. Yes. A. Well, as near as I can remember, I think we had either two or three.

Q. And can you remember anything that you requested, other than just as you say, you wanted work for your musicians; can you remember anything that you

wanted, any detail about it? (55) A. Well, we were trying to work out some agreement where our local musicians could be employed by the theatre.

Q. Did you have any proposal as to how often they should be employed, or when? A. Not that I remember. We never got to that stage, that I can remember of.

Q. Who was the spokesman for your group? A. There was no spokesman.

Q. Have you had occasion to discuss this subject with Mr. Kriger? A. Yes.

Q. Aren't you also known as the business representative? A. Business manager.

Q. Has any other member of your organization had occasion to confer with Mr. Kriger concerning this case, other than yourself? A. None that I know of.

Q. In other words, you are not sure who was the spokesman, but you are the only one of your organization who has even taken the subject up with the attorney for the musicians union; isn't that right? A. Well, three of us wouldn't take it up with the attorney.

Q. But you are the only one who has taken it up with him; is that right? A. That's right. That's all I can remember.

(56) Q. You are not sure whether you were the principal person involved in all this, but you are the only person that has taken it up with your attorney? A. I believe, if I am not mistaken, that there was another member of the committee who met with Mr. Kriger.

Q. Who was that? A. I believe it was Mr. Light, if I am not mistaken.

Q. Were you ever present when Mr. Light was with Mr. Kriger? A. I said I believe he was present at one meeting.

Q. And you don't know what kind of meetings Mr. Light has had with Mr. Kriger; is that the point? A. I don't think Mr. Light has had any meetings with Mr. Kriger alone.

Q. Did you have occasion to attend the convention of the American Federation of Musicians in San Francisco during June of this year? A. June of last year.

Q. June of last year; is that right? A. Yes.

Q. Was there any other person from this area of your organization that went to that convention in San Francisco? A. Yes.

Q. Who? A. Mr. Dilley and Mr. Light.

Q. The three of you? (57) A. Yes.

Q. Who would you consider of your organization, or the three of you, that is most familiar with all the negotiations that have taken place between your organization and the theatre? A. Well, I would say that the negotiating committee.

Q. Aren't you most familiar with all of it? A. Not necessarily.

Mr. Garver: I will ask the reporter to mark this General Counsel's Exhibit No. 19, a letter dated June 10, 1949. It appears to be an original letter from Mr. Herschel Kriger to Mr. Rappaport.

(Thereupon, the document above-referred to was marked General Counsel's Exhibit No. 19 for identification.)

Mr. Garver: And I take it we can stipulate that that is an original of a letter you sent to Mr. Rappaport on or about the date indicated?

Mr. Kriger: We will stipulate that is the original of the letter, without conceding the admissibility or the materiality of the letter.

Mr. Garver: I offer in evidence General Counsel's Exhibit No. 19.

Mr. Kriger: Objection.

Mr. Garver: Mr. Examiner, I direct your attention to that portion of the letter in which Mr. Kriger refers to Mr. Teagle, (58) the union business representative, who is most familiar with the facts, who has been attending the convention of the AF of M in San Francisco.

Trial Examiner Spencer: You offer the letter for the sole purpose of that reference?

Mr. Garver: I will withdraw the offer.

(General Counsel's Exhibit No. 19 was withdrawn.)

Trial Examiner Spencer: Unless you have finished with this witness, I would like to take a brief recess, or if you had finished, I think we might, in any event, unless you have just a few questions.

Mr. Carver: I still have some more questions, Mr. Examiner.

Trial Examiner Spencer: All right. Let's recess for five minutes.

Mr. Garver: The witness is not to discuss the case, I take it?

Trial Examiner Spencer: That's right.

(Recess had.)

Trial Examiner Spencer: All right, Mr. Garver, proceed.

Q. (By Mr. Garver) I direct your attention, Mr. Teagle, to the fall of last year when a show was scheduled for the theatre known as the Roy Acuff show. Do you know such a show, the Roy Acuff show? A. I have heard of his show, yes.

(59) Q. What is that, a band, the Roy Acuff band? A. I believe it's a hillbilly outfit of some kind.

Q. Did it come to your attention that such a band or hillbilly outfit was scheduling this appearance at the Palace Theatre here in Akron in the fall of last year, 1949? A. I believe the manager of the show sent me a wire. I don't recall exactly what was in it.

Q. The manager of what? You mean the manager of the Roy Acuff show? A. The hillbilly show.

Q. Notifying you that they were scheduled or planning to appear at the Palace Theatre? A. I wouldn't know. I would have to see the wire.

Q. They were bringing to your attention that they were to come here, or something along that line? A. I don't know.

Q. Well, what was it about? A. As near as I can remember, they wanted to know if this local had any objection if they would play the Palace Theatre on such and such a date, and I believe that I wired him back that



we had not consummated an agreement with the Palace Theatre.

Q. In other words, pursuant to your advice to them, the Roy Acuff show did not—well, did they come to the Palace Theatre?

(60) Mr. Kriger: I object, if it's the first question.

Mr. Garver: I will withdraw the question.

By the way, may the record show, Mr. Kriger, that the Roy Acuff show was scheduled for the Palace Theatre for a four-day period beginning August 18, 1949?

That is what our record shows. Will you accept that?

Mr. Kriger: Yes, there was an ad in the newspaper, I think.

Mr. Garver: All right.

Q. (By Mr. Garver) Did you know that there was an ad in the newspaper, Mr. Teagle, that the Acuff show was coming in? A. I may have seen the ad.

Q. Did you have any conversations with Mr. Gamble about the Acuff show? A. I believe he came into the office, if I am not mistaken, and brought the contract in, I believe.

Q. The contract that he had with Acuff, or through the booking agent for that show? A. That's right.

Q. What sort of a conversation did you have with Mr. Gamble about that? A. I don't think we had had any conversation. I think he just gave me the contract.

Q. Isn't it a fact that he told you he wanted you to permit them to present the Acuff show, to bring the Acuff show in, and (61) he would see what he could do about maybe giving your people some work, but he at least wanted to bring the Acuff show in in the meanwhile? A. I don't remember any conversation like that.

Q. Do you deny that he asked you to bring in the Acuff show? A. I said I didn't remember of any conversation like that. I can't say yes or no.

Q. You don't deny that—I will withdraw that.

Mr. Garver: I will ask the reporter to mark for identification as General Counsel's Exhibit No. 20 a copy of a letter dated June 24, 1949, from the theatre to Mr. Teagle, beginning with the words, "You are hereby notified," and so on.

(Thereupon, the document above referred to was marked General Counsel's Exhibit 20 for identification.)

Mr. Garver: And I will ask the reporter to mark as General Counsel's Exhibit No. 21 a copy of the letter dated July 1, 1949, it's a two-page letter, from Mr. Teagle to the theatre, attention of Mr. Ron Gamble, and beginning with the words, "In answer to your letter of June 24th," in other words, the letter and reply.

(Thereupon, the document above referred to was marked General Counsel's Exhibit 21 for identification.)

Mr. Garver: I offer those letters in evidence together with the understanding that they are true and correct copies (62) of such letters, such letters as were sent and exchanged between the parties indicated on the documents at about the time shown.

Do you agree with my statement about the authenticity of these, and that they are copies of letters that were exchanged?

Mr. Kriger: Yes, without—I will concede that those are true copies of the letters in question.

Trial Examiner Spencer: You won't object to their admission?

Mr. Kriger: No objection.

Trial Examiner Spencer: They may be received.

(The documents heretofore marked General Counsel's Exhibits 20 and 21 for identification, were received in evidence.)

Mr. Garver: I will ask the reporter to mark as General Counsel's Exhibit No. 22 a copy of a letter dated August 4, 1949, from Mr. James C. Petrillo to Charles E. Hogan.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 22 for identification.)

Mr. Garver: I offer in evidence General Counsel's Exhibit No. 22, together with the stipulation that it is a

copy of an original of such letter sent by Mr. Petrillo to Mr. Charles E. Hogan, as indicated, at about the time shown on the document.

Mr. Kriger: We know nothing about this, and we are unable (63) to stipulate.

Mr. Garver: Well, if you can't agree to the authenticity, I will withdraw the offer at this time.

Mr. Kriger: It's the same proposition. If you can show me that there is an original, that that letter has been sent, I will take your word for it.

Mr. Garver: We know that there is such an original.

Mr. Kriger: But I don't.

Trial Examiner Spencer: All right. The offer is withdrawn.

(General Counsel's Exhibit No. 22 was withdrawn.)

Mr. Garver: In other words, I don't claim any author's rights in the matter.

Q. (By Mr. Garver) Directing your attention again to the Acuff show, that show did not appear at the Palace Theatre; is that correct, that is, as scheduled? A. I don't know.

Q. You don't know whether they came out after you had these conversations with Mr. Gamble about the show, and after they had wired you about it? A. I don't remember of them playing, no.

Q. So far as you know, they didn't come out? A. What do you mean by coming out?

Q. You testified that you saw the ad about them, you testified (64) that they wired you and asked you whether you had any objection to their coming out. You testified that Mr. Gamble spoke to you about it, he brought a contract in and showed it to you.

Now, all I am asking you is this:

Did the Roy Acuff show come and play at the Palace Theatre as they were scheduled to do at that time?

Mr. Kriger: Wait a minute. Before you answer that, I was in error, I think, in referring to the ad. I think the reference I had to the ad was the one in 1947, the Eberle

show, and I would like my prior reference to be corrected. I don't recall an ad on the Acuff show.

Q. (By Mr. Carver) Mr. Teagle, so far as you know, the Roy Acuff show did not appear in the theatre in the fall of last year? A. I could have been out of town; if they played, I don't know whether they did or not.

Q. Directing your attention to a document received in evidence as General Counsel's Exhibit No. 21, that is the letter which you sent to Mr. Gamble in reply to his, I note that it indicates at the end that a copy is to be sent to Mr. Kriger and a copy is to be sent to Mr. Petrillo; is that correct? A. That's right.

Q. By the way, how was that letter prepared? Did you dictate it? Did somebody write it out for you, or how was it done? It's a long letter, almost two pages. (65) A. Well, I imagine I dictated it, or I could have typed it myself.

Q. Do you have a secretary in your office? A. Part-time.

Q. At about the time of this letter did you have a secretary in your office? A. Part-time.

Q. Did that secretary take dictation and type letters. A. That's right.

Q. Was there anybody else that could have—did you prepare that letter, either yourself, by dictation, or you actually typed it; is that your point? A. That's right.

Q. I note that in your letter of July 1st, you say this, in part, this is your letter to Mr. Gamble, I am now quoting from your letter, "We regret that you state 'in connection with such a contract'—you are now quoting Mr. Gamble's words—" 'in connection with such a contract, if you care to enter into it, we must have your assurance that you will not insist upon employment when we have travelling stage bands and accompanying acts—' " then you go on, "and that you further state such a contract—" now you quote Mr. Gamble's words—" 'should be made for the usual period of one, two or three years,' " and here is what you now have to say in your letter about that proposition, now quoting your words, "the matter (66)

of frequency of employment of local musicians and the conditions thereof is properly a subject for collective bargaining, and your prefacing your willingness to enter into collective bargaining with the condition that we must relinquish our right to bargain on one of the issues that may arise between us, obviously is in itself an unfair labor practice within the meaning of the Labor Management Relations Act."

Do you recall writing such things in the letter? A. Yes.

Q. In other words, Mr. Gamble had said to you that he wanted you to relinquish your demand that musicians be employed when a traveling band was brought in; is that right?

That was his position, and you were reciting it in your letter?

Mr. Kriger: I object to that. I think the letters speak for themselves. It is an admission for Mr. Gamble to make, and not for Mr. Teagle.

Trial Examiner Spencer: You may answer if that is as stated by counsel.

The Witness: Can you read it again?

Trial Examiner Spencer: Will you read the question, please, Mr. Reporter?

(Question read.)

Trial Examiner Spencer: You have got a double question there. I think you might simplify it a bit, Mr. Garver.

(67) Q. (By Mr. Garver) At that time Mr. Gamble wanted you to not insist upon having your people employed when he brought in a traveling band; that's true; is it not? A. He may have mentioned that in the negotiations, yes.

Q. And your position was that your people should do what, when a traveling band came in? What did you want? A. My position, and the position of the negotiating committee was that we were negotiating for the employment of musicians in the theatre, local musicians.



Q. Did you want them to work with the traveling band, play in the traveling band? Where did you want them to work when a traveling band came in? A. In the theatre.

Q. Down in the pit? Isn't it your position when they brought in a traveling band, that you wanted them sitting down there in the pit? A. Not necessarily. We have had local bands who have played on the stage, when a traveling band has been here; we have had them augment traveling bands.

Q. Is that the position you made known to Mr. Gamble? A. No, we said we were trying to negotiate for the employment of our local musicians in the theatre.

Q. And it was after this exchange of letters that the Roy Acuff show was supposed to come here; isn't that right? A. I don't remember what dates.

(68) Q. Well, the Acuff show was scheduled for August. This exchange was in early July—I will withdraw that.

Did you talk with Mr. Gamble as to what work you wanted your people to do when the Roy Acuff show was scheduled? A. I don't remember of any discussion relative to the Roy Acuff show.

Q. This was right at the time when you were negotiating. You just got through exchanging these letters, you sent him practically a page and a half letter, didn't you? A. I don't remember of any conversation relative to the Roy Acuff show with Mr. Gamble.

Q. But you did notify the Acuff people that you had not come to any understanding with the theatre, is that right? A. In reply to the wire received.

Q. Did you notify Mr. Petrillo's office about this? A. Not that I remember of, no.

Q. Do you remember that after the Acuff show Mr. Gamble again came to you and told you he would like to bring in a show from Youngstown, and wanted you to agree to let him bring that show in; do you remember that? A. I believe Mr. Gamble did come to the office, and we negotiated something along those lines, or tried to negotiate something along those lines.

Q. All right. What was that about? Tell us what the negotiations with Mr. Gamble were about the Youngstown show? (69) A. Well, I don't exactly remember what was said about that time.

Q. Not the words, just what did he want, and what happened? A. If I remember, he made some proposition to us that we thought would be acceptable, and we made up a contract to that effect, but they didn't sign the contract.

Q. Wasn't the deal something like this—and you correct me if I am wrong—that if you would let him bring in the Youngstown show, he would see if perhaps he could work out some show where maybe he could work some of your musicians in, is that right, something like that? A. I don't just exactly remember what was said.

Q. By the way, I take it that you are here today because of your position as secretary of your organization; is that right? A. That's right.

Q. I mean, I didn't have you come down here—well, why are you here today? A. Why am I here?

Q. Yes. A. Because I got a notice from the Fifth Regional Labor Board, I believe, or Fourth in Cleveland.

Q. You are here with the attorney for your organization; is that correct? A. That's correct.

Q. Are you going to be able to remember these things better (70) when Mr. Kriger examines you than when I have?

Mr. Kriger: I object to that.

Trial Examiner Spencer: Sustained.

The Witness: I might say—

Trial Examiner Spencer: Never mind. I sustained the objection.

Q. (By Mr. Garver) Isn't it true that during the discussions that you had with Mr. Gamble at one time, you wanted the theatre to agree that every time they had a traveling band come in from out of town, they would also use your musicians in some way; isn't that true? A. We were negotiating the employment of local musicians with the Palace Theatre.

Q. And isn't it true that your position was originally that every time they were to bring in a traveling band, your people were to sit there in the pit and perhaps play overtures and chasers; isn't that true? A. Not that I remember of.

Q. And isn't it true that later on you changed your position from not insisting on that, but you were now willing that for every two traveling bands that would come in, at least for one of them your people would be out there in the pit? Wasn't there a change along those lines? A. There probably were several suggestions made, but I can't remember all of them, which naturally would come up in the general course of negotiations.

(71) Q. In other words, the theatre was constantly making various proposals to you so that they could bring in these various bands without your interference; isn't that right? A. I didn't understand your question.

Trial Examiner Spencer: Will you read the question, please, Mr. Reporter?

(Question read.)

A. Well, we had several negotiations, but I don't just exactly remember what was said.

Mr. Garver: That is all of Mr. Teagle.

Trial Examiner Spencer: Just a moment, please. Mr. Rappaport, do you have any questions of the witness?

Mr. Rappaport: I believe not.

Trial Examiner Spencer: Mr. Kriger?

Mr. Kriger: Not at this time.

Trial Examiner Spencer: You are excused.

(Witness excused.)

Trial Examiner Spencer: It's a little late to call another witness.

Mr. Garver: I think so.

Trial Examiner Spencer: We will go off the record to discuss adjournment.

(Discussion off the record.)

Trial Examiner Spencer: Back on the record.

The hearing is adjourned until 10:00 a.m. tomorrow morning.

(72) (Whereupon, at 4:50 o'clock, p.m., the hearing in the above-entitled matter was adjourned to Wednesday, March 15, at 10:00 o'clock, a.m.)

(73) Wednesday, March 15, 1950.

Pursuant to adjournment, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

(75) Trial Examiner Spencer: Are you ready now, Mr. Garver?

Mr. Garver: Yes; call Mr. Houser.

MARK HOUSER, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Garver) Will you state your name? A. Mark Houser.

Q. And what is your address? A. 65 Ettling Avenue, Barberton, Ohio.

Q. And I understand you are presently employed with the public school system here in the city? A. No; I work there individually. I teach there.

Q. But you were formerly and are presently an officer, or do you have some position with the American Federation of Musicians, Local 24 of Akron? A. No. I have no job there; I just work on the side.

Q. You are a member? A. Yes, I am a member.

Q. And I take it your yourself are a musician? A. Yes; that is right.

Q. And do you play some particular instrument, or a whole series? A. No, violin is the major, but I am director of Shrine Band, (76) Grotto Band, and I have a WADC orchestra on Sunday afternoons, and all jobs that come up.

Q. I didn't hear just how you began your answer. Did you say you did play on a particular instrument? A.

Yes, I major on a violin, but I play some other instruments, and direct.

Q. Have you had occasion to play or direct any orchestras in any theatres in Akron, say, during the last four or five years? A. Four or five years?

Q. Yes. When was the last time, if that length of time isn't satisfactory to you? A. Well, I can't say. I have been at the Palace Theatre for about 11 years, maybe more than that.

Q. Up until when? A. Well, probably 1947. I am not sure of the date.

Q. I am not trying to tie you down to any particular date.

Trial Examiner Spencer: You directed a band at the Palace for a number of years prior?

The Witness: It is about approximately six years, but then I played in orchestras before I directed.

Trial Examiner Spencer: You first played in an orchestra and later directed a band at the Palace?

The Witness: Yes.

Mr. Kriger: Mr. Examiner, will you show a continuing (77) objection to his testimony, so far as it relates to events which occurred both prior to the act, and also to a period prior to six months of the filing of the charge in this case?

Trial Examiner Spencer: Why not just make your objection to all material in this hearing that pre-dates those periods stated by you?

Mr. Kriger: Yes, sir, that will be all right.

Trial Examiner Spencer: I will consider that your objection goes to that line of inquiry at any time during this hearing. It is overruled, and that makes the record clear for you.

Mr. Kriger: Thank you.

Q. (By Mr. Garver) I direct your attention to the years of 1945, '46 and 1947. There is some evidence and testimony in this case, yesterday, with respect to certain tax that was turned into the local of the union by you, based upon money apparently paid by the theatre, for



various groups of nine men, from time to time. Do you have some knowledge of that? A. Yes.

Q. Perhaps this document will assist you. This was received here yesterday, and that is known as General Counsel's 5, and if you will notice, it is a list of dates paid, and then the total amount of salaries shown on there, and the explanation yesterday was that for example on the first line, where it says \$6.80, that is two per cent of the \$340.

(78) Now, on that first line, where it says "Mark Houser"—of course, you are Mark Houser; that is correct? A. Yes, sir.

Q. Then there it says in parentheses "Ray Kinney." Apparently that was a stage show. Do you recall such a period, when Ray Kinney played at the Palace Theatre? A. Yes, I believe I do.

Q. What was the Ray Kinney show, if you remember? Is Ray Kinney a band? Is that the name of the band? A. Well, I think. I don't recall the name too well. I think it is a band, but we didn't play in the band.

Q. I didn't quite understand your answer. You say if you did not play? A. If they didn't require our services, probably it was a band.

Q. Let's see if I understand you correctly. Were you a steward of the union at that time, of the local? A. No, just a member.

Q. Well, what would you have done, say, with that? Did you have something to do with paying the tax into the local? A. Yes, I paid that.

Q. And how would you go about that? Would you collect from the theatre or just what—in other words, there is no reason why I should ask you a whole series of questions. Suppose you tell us just how that operated? A. You mean the pay part of it?

(79) Q. Yes. How it was paid and how you collected. A. Well, each man, the manager would tell the time, each man could come up and get his pay.

Q. You are going a little too fast for me. This subject is very clear to you, and of course it is something you

have lived, but I haven't. Will you tell me that again? When you say the "manager," the manager of what? A. Well, the manager would always inform us where the fellows could get their pay, or what day, or he would practically set a day, and each man would get this pay.

Q. When you say the manager, you mean the manager of the Palace Theatre? A. Yes.

Q. And would you be one of the people that would go to the theatre? A. To get the pay?

Q. Yes. A. Yes, I would be one.

Q. And now, with reference to nine men, is that what you usually had? A. Nine men.

Q. And then were you in any way the leader of that group? I notice this record, for example, you were the one who paid the tax into the local; is that right? A. I paid the tax into the local as the leader.

(80) Q. You were considered the leader of the nine men? A. Yes.

Q. How would you know what they got? Would you check with each of the men and see whether they had gotten this money, or if you know what it was, how was it paid through you? How was that done? A. No, it was paid to each man individually in an envelope.

Q. Now, for example, it shows week after week on this record, or for various weeks— A. Well, that wasn't paid to me, that amount. I paid tax on that amount.

Q. Well, how would you know what the total amount, say, of the \$340 is, as shown? Would you sort of tally that up by checking with the men? A. No.

Q. How would you know? A. No, the manager just paid each one as a worker in the place.

Q. Well, let's see how that would be. For example, as I understand what you said before, when these various bands were there, like Ray Kinney—and let's just look that over; there is other bands listed. Do you see that one, Vaughn Monroe; is that right? A. That is right.

Q. That was a band that played there? (81) A. That is right.

Q. And then there is Prima; that is another band that played there, is that right? A. That is right.

Q. Now, I am looking further down on the page, and there is Glen Gray; that is another band; is that right? A. That is right.

Q. And then there is Dorsey; that is another band; is that right? A. That is right.

Q. Now, each of those bands that I have just enumerated, they played at the theatre; is that right? A. That is right.

Q. Now, during those periods, when the bands that we have just talked about, the Prima band and the Dorsey band and the Vaughn Monroe bands, when they played the theatre, as I understand your testimony, you and the nine men did not play; is that correct? A. No, we didn't play.

Q. Well, then, I am right? I mean, my understanding is right? A. No, we didn't play; no, the band played.

Q. You mean none of the nine men played in the theatre when these orchestras were playing; is that the point? Don't think I am trying to trick you; I just want to understand the picture. (82) A. Well, now; there may be one or two where they required an overture. I know there is one or two I can't place, but we got the same price if they did three shows a day. Maybe there were several that we played their finale and the overture.

Now, which one, of course, we got the same price anyway, so I couldn't—

Q. When you say three shows a day, is there any one you remember? Take when Vaughn Monroe played, or Dorsey. You and the nine men did not play; is that right? A. We did not play.

Q. Were you actually in the theatre in any way? I mean aside from maybe being in the audience? Were you in the pit or anywhere else during those shows? A. Well, we had to take what the manager told us. If he said—now, at first we used to rehearse every week, and then if he was there, on a rehearsal date, he would tell us, "No use coming in" or "You had better show up this time," or "I know we won't need you this time" or "Might as well show up on this date; maybe we may need you" or something like that.

Now, that would happen invariably, but other times, sometimes Kenny would say, "I don't want to even see you."

Q. What was the practice, say, all during those periods of '45, '46 and '47, on G. C. No. 5, that you have in your hand, when all those various bands played? What was the general (83-84) practice? A. Of the orchestra?

Q. Of your nine men, yes. A. Well, I always had a rehearsal Thursday or Friday, I think, and we broadcasted quite a bit for the theatre, and the manager would give the continuity on the following show, and for the band he would announce the band over the air, you see. We were right on the stage; we would always rehearse on the stage, and WJW, I believe at that time, set up microphones, and we would rehearse, and then go over there and the manager wrote up continuity on what show was coming in, until finally it just dwindled down; he wouldn't show up or it just dwindled down until we didn't have any broadcast.

Sometimes the wires would be broken. But then he would always tell us what show was coming in, if he had anything to play. Once or twice near the end of the week, like on a Tuesday, Wednesday or Thursday, a show came in—I don't know if it is on this or before this, but we did play an overture and the closing, because it kept to three shows a day, and that was the minimum that this was based on.

Q. You mean the \$340? A. Yes, that was based on three shows a day. And of course, if they had extra shows on Saturday or Sunday, then he said, "Stay away."

Q. Three shows a day, and usually it is shown on there as (85) four days; is that right? A. Well, it must have been four. I don't know what it was, but it used to be the middle of the week.

Q. Well, look on your form, say, for the Cab Calloway band. That was for four days. You say that there were three shows a day, and three times four that would be twelve a week; 12 shows for four days; is that right? A. Yes, 12.

Q. So that your group of nine were paid as if they had played for 12 sessions; would that be right? A. That is right.

Q. By the way, can you break that down on the \$340? How would that be broken down? A. If I remember right, each man received nine dollars a day. I think that is the way. Now, I don't know for sure.

Q. Did you ever discuss with the executive board—did you ever have discussions with the executive board of the local? A. You mean concerning this?

Q. Yes. A. No.

Q. Well, I mean in 1945, '46 and '47, with respect to the two per cent, and what was going on at the Palace Theatre? I mean, those arrangements? A. No, there was nothing.

Q. Did you have any discussions with Mr. Teagle during those years, with respect to the system that you were operating at (86) the Palace Theatre? A. None that I can recall. No trouble ever came up.

Q. Did Mr. Teagle know that the tax was being turned in, or did you tell Mr. Teagle you were turning in this two per cent tax? A. No, that was in effect when I got the job, so I just naturally kept going.

Q. What do you mean "When you got the job"? The job of being a leader? A. Leader, as leader.

Q. Does the union appoint you as a leader, or how was that done? A. Well, the first time, the man before Mr. Holland hired me; they had a leader that wasn't satisfactory, and he called for me to have a talk, and changed leaders at that time.

Q. Mr. Holland, who was the manager at the theatre? A. Yes, the man before him.

Q. Did you ever play for any of these radio broadcasts that you talk about? A. Radio?

Q. At the Palace Theatre? A. Oh, yes; I was on the violin.

Trial Examiner Spencer: You use this word "leader." Is that descriptive of your position in the orchestra?

The Witness: What is that?



(87) Trial Examiner Spencer: Do you use the term "leader" as descriptive of your position with the band?

The Witness: That is right.

Trial Examiner Spencer: That is not a union term? That doesn't describe the position in the union, the word "leader"?

The Witness: No, not in the union, no.

Trial Examiner Spencer: Just your connection with the orchestra?

The Witness: Yes, just with the orchestra.

Trial Examiner Spencer: I just wanted to get the term straight.

Q. (By Mr. Garver) What was your connection with the union? You were the one that paid the tax of \$6.80?

A. Yes, I paid that. And the leader got—let's see; I think \$14 a day, \$13 or \$14; I don't recall.

Q. In other words, were you getting this approximately \$13 a day when all these various bands were playing, even though you were not playing? Is that right? A. I wasn't playing, no. Now, maybe there is a couple times he had us—thought the traveling band wouldn't take, and he asked us in there on a Friday once to play, but then the crowds got well, so he said, "don't come any more," because he was going to put on more shows, which would have cost him more.

(88) Q. Well, let's see. According to this record, these traveling bands were being brought in in 1945, 1946 and 1947, apparently about—well, actually into 1948, so almost a full three years.

Now, during those three years, how many times did you yourself actually play in the theatre when there were audiences in the theatre? A. Well, now, they had other shows besides the travelling bands.

Q. All right. How many times during those three years did you actually play for any kind of show in the theatre, with an audience in the theatre, for an audience? A. That would be hard to tell, but I can tell you how it started. First, we played every act and finally, one band came in, just a 20-minute act, and of course we didn't do

anything during their set, but we played the beginning and closing. Naturally, the policy of the theatre was to get bands in, then for a while we played curtain up and curtain down for just the band act, and once in a while ~~an act~~ would come up which required an orchestra in the pit, and I know we played, but the actual number, now, I can't—

Q. Was that before 1945? You see, you can look at this record; it shows these various bands coming in. A. Does it show the other acts, the other shows coming in?

Q. Do you know of any other shows that came in between these (89) various bands? A. I couldn't say.

Q. Well, let's see. A. Those are all bands on there, aren't they?

Q. Well, let's take this: Here is a four-day period ending January 8, 1945. That is for four days, for the Ray Kinney Band; is that right? A. They is pretty far away, but it must be.

Q. All right. Then there is a four-day period for the Casa Loma band, ending February 5, 1945; then there is one for the Shep Fields. A. I remember his rehearsal. Now, whether we played or not, he was a crank on the loudspeaker. Now, it may be we played for that, because I remember distinctly we were sitting in the pit at the rehearsal, and he was walking to the back of the house and back. Now, we were there for some reason. I remember him distinctly being a crank on the loudspeaking system.

Q. But as you see, for week after week, it is always the same amount, \$340; is that right? A. That is right.

Q. And that conforms with your recollection, it was always a standing amount, \$6.80 being for tax? A. Yes.

Q. So that this amount was apparently being paid to the men regardless of whether they were working in the theatre or (90) not. That is true, or that is a fair statement, isn't it? A. Well, that is the way the manager made the deal to us.

Q. Did you make the deal with the manager? A. Well, when the new manager came in—I forget the man

that had it, but Holland I remember distinctly. I come to see him to get the policy, and he said he didn't have anything to do with an orchestra; he had orders from New York to proceed just as they had been with the policy.

He said, "We are going along all right; we will go along all right." There was no contract or anything; that was just verbal. He mentioned the fact, "Just keep on as you have been."

Q. Well, isn't it true that there were week after week when you would go down and get your pay, when you hadn't played for any of the shows during that week? A. Oh, yes. Of course, I would always take it on the manager to tell whether he needed us or not, if there was music to play.

Q. So that when he would tell you he didn't need you, you wouldn't play, but at the end of the week— A. He would say, "Stay away"—say it as a joke—"I don't want to see your face."

Q. But you would be getting paid anyway; is that right? A. Yes.

Q. These other nine men, who would select them? A. I would do that.

(91) Q. You would select them; is that right? A. That is right.

Q. In other words, here was a group of nine men that weren't playing in the theatre, but what would you do? Turn a list of names into the theatre? A. Well, we rehearsed each week until near the end there it dwindled down where the manager wouldn't put on these broadcasts, and of course, I would be there every rehearsal—that is, every Friday morning, when the new show came in, to make sure that there were no men needed. Sometimes they would call us up at the last minute to come down; then we would go down and there wouldn't be any work there. That is, work to play. Still—

Q. Well, let's see: You would come in on a Friday morning, when there was a traveling band? A. Yes.

Q. Then some time during the morning, the manager would tell you the men were not needed? A. Yes. Some-

times he would tell me—we used to have a rehearsal on Thursdays; sometimes he would know then. Then sometimes he would give me dates ahead, two or three months.

Q. Well, if you weren't going to be needed for a week, what was the point of the rehearsal? What would you rehearse? A. To keep the men together. Mostly it was a broadcast for the advertising of the show coming in the next day, the band.

(92) Q. So that isn't it true that actually, you were deciding upon nine men who would be getting paid, even though they wouldn't be working? Almost making up a list of nine men who would be receiving some pay, even though they wouldn't be in the theatre? A. Well, they would be available. I always made it a point that I hired them on that—I didn't change many men, only when the occasion arose if they got a job which they could not handle the theatre job. I always had very good men at that time; some of our men were really better players than the traveling bands that came in from time to time.

Q. At that time, were there many musicians available for use in the theatre here in the city? A. Not too many. It just happened, oh, there was one fellow belonged in Canton, of course; belonged to this Local, and he was good, and some would make arrangements with their job to get off, you know, for a show. Not very many, two or three.

And then there were three or four music teachers which were always available on that job. We used to rehearse on Thursday morning, so they would all be there for rehearsal, so it was one of those things they were available.

Q. You say you used to rehearse on Thursday morning. What would there be to rehearse on Thursday morning? A. Just to keep in my way of directing, and also we thought, you know, if they wanted to put it on the air, at rehearsal, (93) anyone can set a microphone up and go over there, and it is a good chance for good publicity for the theatre, which they always used.



If the manager wasn't there to give the publicity, the announcers would run out to his office or call him up and ask him what show was coming in or picture.

Q. Well, suppose a man wouldn't show up at a rehearsal? Would he get paid anyway? A. I don't know of a time when he hasn't.

Q. I didn't get you. In other words, he would get paid? A. There is no time that I know of that these men wouldn't be there.

Q. These nine men were there every time you had a rehearsal; is that the point? A. Unless it were an accident which were very few, that they couldn't get there, but as far as I can remember, every one kept up.

Q. But as far as the pay, they collected from the theatre, that would go on regardless of whether they were actually at the rehearsal or not? A. Well, they were there at rehearsal. I can't say that they weren't there intentionally or anything.

Q. Let me ask you this: Let's say that a traveling band was not at the theatre during those years. Let's say there was a couple of weeks when they had no show. There were such (94) times, is that right? A. Yes.

Q. In other words, there were times when the theatre only had a movie? A. Yes, movie.

Q. And there would not be any stage show at all; is that right? A. That is right.

Q. Now, would you and your nine men be getting paid during those weeks, when there was only movies going on, but no band in the theatre at all? A. No.

Q. What? A. No, we never got paid for a movie.

Q. In other words, if the movies were on, you were not getting paid at all; is that correct? A. No, we would keep rehearsing, though, just the same.

Q. But you wouldn't be getting paid? A. No.

Q. In other words, the only time you got paid for weeks was when there was a traveling band in, or a show going on in the theatre? That is correct, isn't it? Isn't that a fair statement? A. Yes, that is where the manager made the arrangements that way. Yes, that is right.



(95) He would always give me the dates of these bands coming in. "You may play, you may not play; probably, I would say, you won't play." But always he gave me the dates ahead.

Q. But was there ever a time during those three years when there was a traveling band playing in the theatre, and a group of nine men did not get paid? A. No, I don't know of any.

Q. In other words, every time there was a traveling band or stage show, your group of nine men got paid at the theatre? A. That is right, because the manager, you know, always gave me the dates, that that was when we were supposed to be there.

Q. Well, you got paid if there was a traveling band or stage show? A. Yes. Well, he made the arrangements that they would be there. He would always give me the dates.

Q. Of what, when the traveling band was coming in? A. Sure.

Q. Then you would know that that was a week that you were going to get paid for your people? A. That is right, he would hire us.

Q. Now, do you know who Ange Lombardi is? A. Yes, I know him.

Q. Did he become the leader, as you speak about it, after you— A. After, yes. I don't know, but he became a leader.

(96) Q. How did it happen that he became the leader? Weren't you still available? A. Yes. The only way that I can see, the manager told me one day, he said, "You and I don't have any contract, do we?" Mr. Holland was the manager. I said, "No"—just talking between ourselves. "You tell me when the shows are, and I am here."

And he said, "Well, if we don't have a contract, I can hire anyone I want to?" And I said, "Yes, and I can quit any time I want to, also."

So he said, well, he had heard a good four-piece band; he drank beer with the leader. That is the way he told me, and he had heard a good four-piece band; he

would like to hire them for the next stand-by—or, not “stand-by” what he called it—well, the next show, whatever it was. I don’t know, the last.

Q. I don’t quite follow you. You said that he said there was another group he would like to hire for the stand-by? A. For the next show, it was. He mentioned “stand-by.”

Q. Well, what is meant by “stand-by”? A. I don’t know. I never stood by.

Q. Well, did you know what he meant when he was talking about a “stand-by”? A. Well, practically everybody does, yes.

Q. What did he have reference to when he was talking about a (97) “stand-by” to you? What did you understand him to mean at that time? A. Well, sometimes he says a “do nothing.” He gave that name, too, and lots of times different names he would call it.

Q. Talking about the group of nine as the “do nothings”; is that right? A. Sometimes.

Q. When you say there was some talk about a group of four, could he have employed four men in the band? A. Well, he didn’t. But he had told me he had heard them at some club he said he drank beer with—

Q. As a matter of fact, at that time your minimum number which you would have permitted a theatre to use was nine; isn’t that so? Wasn’t that where the nine comes from? A. It had always been nine before I got there, and just kept on nine.

Q. The theatre couldn’t play eight or seven or six; it would have to be nine? A. I don’t know. It had always been nine. We never questioned anything; he said “Bring the orchestra,” and it had been that way years before I got there.

Q. When you say it had always been that way, what do you mean? Was that one of the rulings or regulations?

A. Well, sometimes there might have been a minimum number of men hired before they had the different policy.

(98) Q. Was that an understanding or a rule of your local union, or of your national union, or what is that? A.

No, at times I think there were ten there, or there might have been. I don't know. I just kept on with the nine, after he said, "My orchestra." I just took it for granted that it was nine.

Q. Were you familiar with the rules of your local at that time? A. Well, there were no rules there. There was just a price in the book, for the minimum shows a day.

Q. What book do you mean? A. Well, probably the union book, the price rules.

Q. Did you have a copy of such a union book with you? A. No, I don't.

Q. Did you used to carry such a book with you at that time, 1945 and '46? A. No, never carried it.

Q. What was there in this union book besides prices? Were there various rules of the organization? A. Well, probably like any rules for—

Q. What is your understanding of what the rule was at that time, about traveling bands coming in to play in a particular locality? A. Well, I never took it under consideration what it was, because it was so gradual, the change in policy.

(99) You see, at first we played these bands up and down, you know, and when the manager found out if we played four or five on a Sunday, that would cost him more, he just said, "Well, don't come around; we will just pay you for three," because that was the minimum, you see.

Q. Let's see if I follow you. When the traveling bands would come in, sometimes on Sunday, for example, they would play four shows? A. Sometime four or five.

Q. Four or five shows. And if they played four days, that would be maybe 20 shows for the four days; is that right? Five shows a day? A. No, they wouldn't have four a day. They would have three on a Friday, and four on a Saturday, and then on Monday probably just three again.

Q. The number would vary; is that right? A. That is right.

Q. But insofar as your men getting paid, they would get paid for a flat—as if they had played for three sessions? A. Yes.

Q. (By Mr. Rappaport) How long ago was it that this broadcasting occurred that you were talking about? A. Those dates, I don't know. Near the end of my term there, where the manager got so disinterested—that is, he would not get the continuity right; we just kept rehearsing for a while, then, well, it gradually tapered off the last two or three or four or five months, probably.

Q. Was that Station WJW? A. It used to be right across from—

Q. Wasn't that, the station? A. I think that is the one. It used to be in the Central Garage.

Q. It moved to Cleveland years ago, didn't it? (115)  
A. Yes.

Q. So it wasn't in 1945, '46 or '47 that you broadcast over that station? A. No, the last, it tapered off there, but we rehearsed.

Q. That was prior to the time, wasn't it? A. Yes, we rehearsed on, just the same.

Q. Now, these rehearsals that you speak of, you held those just to keep your own organization in trim, wasn't that the purpose? A. That is right.

Q. And not because you were required to by the theatre management? A. No. Although he did mention he would like to hear it occasionally, to see how it sounded.

Mr. Rappaport: That is all.

Trial Examiner Spencer: Do you want to proceed now?

Mr. Kriger: I would.

Trial Examiner Spencer: Very well.

#### CROSS EXAMINATION.

Q. (By Mr. Kriger) Mr. Houser, at whose suggestion was it that your people would not work on those occasions when they didn't work at the appearance of a traveling band? A. It was the manager's.

Q. Did you ever suggest that you receive stand-by pay? A. No.

(116) Q. And to your knowledge, did any member of your band ever suggest that you receive stand-by pay?  
A. No.

Q. Or to your knowledge, did the union ever suggest that you receive stand-by pay? A. No, I just kept on the same policy we had been doing for years.

Q. And if the manager wanted your services, or the theatre wanted your services on those occasions, would your people have been available to play? A. Absolutely, because that is the only fellows I hired, those that were available for that work, because we rehearsed in the morning.

Q. Now, also on those occasions, did you make any kind of a check, or in other words, did you exercise any discipline over your people, so that they would remain available to play? A. Yes, I always made sure that the fellows would be available to play. Sometimes a fellow would call me up and ask, maybe on a Saturday or a Sunday, if they would be called, and I would say, "Well, the manager said 'Stay away,'" so if they did have an occasional job pop up, some outside date, they would probably be able to play if they wanted to.

Mr. Carver: May I hear that, Mr. Reporter?

(The reporter read the question and answer.)

Q. (By Mr. Kriger) And the fact is, Mr. Houser, that if the (117) manager had wanted them to play, they would have been there ready to play? A. Absolutely.

Q. Now, supposing one of your people got hurt or got sick; isn't it a fact that you would replace them? A. Could, easily enough, yes.

Q. And you at all times kept this band together as an operating unit? A. That is right.

Q. Now, did the manager of the theatre know that? A. He knew that, because he checked up on rehearsals occasionally. He said he liked to hear how it sounded.

Q. And when you were displaced as leader of the band, he hired somebody-else as a leader of the band? A. That is right.

Q. What were the caliber of these people that you had? Good men? A. What?

Q. Were they good men? A. The very best. They were better than a lot of the traveling bands on vaudeville.



Mr. Garver: That of course is your opinion?

The Witness: What?

Mr. Garver: That of course is your opinion?

The Witness: No, sir; I can prove that, because I was (118) there at rehearsals. They had maybe three or four times our number but—

Trial Examiner Spencer: Well, let's get on with the examination.

Q. (By Mr. Kriger) Now, on occasion you also played on the stage? A. Yes, we played on the stage.

Q. Your band on the stage with the traveling bands?

A. Well, sometimes when there wasn't a band there, we would be on the stage also for vaudeville acts.

Q. And on some occasions your band was in the pit?

A. Yes.

Q. You played an overture, and you played what they call a chaser? A. Yes.

Q. And you sometimes played at intermission? A. That is right.

Q. In other words, the fact is, is it not, Mr. Houser, that until the actual arrangements were made, until the actual rehearsal was held of the traveling bands, you didn't know what the requirements would be? A. No. On a few occasions the manager would say, "Well, I know that they won't need you." Then other times he said, "Well, you might show up this time." Sometimes he said, "Don't show up."

(119) Q. Then you would get together with the traveling band leader, and the two of you would decide what the role of your people would be? A. Yes.

Q. Now, on some occasions your band also played, did it not, without the traveling bands? A. Yes.

Q. On these radio broadcasts, that was for the purpose, in addition to airing the rehearsal, it was for the purpose of advertising the theatre, was it not? A. Yes; it would always be so. Sometimes we would make up stories just to advertise; say "Direct from the stage of the Palace Theatre" and so forth.

Q. Do you remember how long that broadcast would last? A. I think it was 15 minutes. Fifteen minutes we would be on the air.

Q. And that was advertised in the newspapers ahead of time? A. Oh, yes, yes. It had my name.

Q. Now, I will ask you whether or not your people would have been available to continue those radio broadcasts if the manager of the theatre would have required them? A. Well, yes, but of course the station moved out, and at the last, there, there was radio trouble and manager trouble.

Q. But your people were available? A. Yes, we kept on rehearsing.

(120) Q. If the management wanted them, you would have played? A. Yes, we kept on rehearsing.

Q. Now, did you have a written contract with this theatre? A. Never.

Q. And that covers a period of approximately 11 or 12 years? A. I never had—of course, I was only leader the last five or six, probably, but I never had a contract.

Q. Now, you stated that your people were paid by cash? A. Cash.

Q. By a local manager? A. Yes, in envelopes.

Q. And did they deduct Social Security? A. Yes.

Q. And withholding tax? A. Yes.

Q. Now, about the tax which was paid by the union, that was likewise deducted from each man's pay? A. Each man paid me, yes.

Q. Each man paid you the one per cent? A. Yes; that was outside.

Q. The two per cent, rather. A. Or two per cent is what it was.

Q. And you turned that into the union? A. That is right.

Q. Now, that is like a form of additional dues, isn't it? (121) A. It acts the same way.

Q. The manager didn't pay that two per cent? A. No.

Q. That came out of the earnings of each man? A. That came out of theirs, yes.

Mr. Garver: Well, that is a question of who is paying what. The company put up the money, and there is a deduction of it by the man from the amount of his money,

Q. Even though they might not have played even for one, but they would get paid for three; is that right? A. That is right.

Q. Let's see; I am trying to understand you. You say —(100) was it a rule? There was a change of policy about the traveling bands coming in? A. Well, I mean from the legitimate vaudeville to the bands. Gradually, one act would be a band and, well, finally they took two of the other acts out and made a band, so it came right down to the band playing on the stage. Then they would hire individual acts.

Q. By the way, how long have you been playing theatres? A. Theatres?

Q. Yes. A. Oh, I haven't played any lately. Probably 10 or 11 years, I think; maybe longer than that. I went in right after the Palace opened up here, as a player.

Q. Well, there has been kind of a change during these years that you have been around the theatre? There was a time where there would be bands in vaudeville acts back in the old days; is that right? A. That is right.

Q. And then gradually the vaudeville acts were cut down; and pretty soon there were just bands, with a few things that the bands would have with them? A. Well, no; they would hire individual acts.

Q. But they would go right along with the bands? A. No, they wouldn't travel with the bands. They would be on their own, and then they would rehearse on a Friday morning, (101) these outside acts.

Q. Oh, the outside acts would rehearse with the band that would be traveling; is that right? A. Yes, that is right.

Q. So that is the reason you haven't had much to do —you have gotten away from the theatre, because that kind of thing has been growing? A. No, I haven't gotten away, because at times, as I say, the acts coming in would insist on the pit orchestra.

Finally, they even changed their policy where they would change their form of music, where the band in back —because no actor likes to have a band in back of him; they would rather have them in the pit, but they would

change their policy and gradually change their music over to fit the different sided orchestra.

Q. You mean these bands would change their orchestra to fit the various acts? A. No, the acts would change their music.

Q. So the bands could play them? A. That is right. But any act would prefer a band in the pit in front of them, instead of back of them.

Q. What is your understanding of the rule that the local has had with respect to when a traveling band can come in and play? Can a traveling band come in and play without using local people?

(102) Mr. Kriger: I object to that. This man is only a member of the organization.

Q. (By Mr. Garver) Well, do you know about that? A. About what?

Trial Examiner Spencer: Let's find out; lay a foundation.

Q. (By Mr. Garver) Are you acquainted with the various rules that you had in 1945, '46 and '47 with respect to the rates of the men? You knew about that, of course? A. Yes.

Q. And what are some of the other things that you had to know about this in connection with your acting as leader? A. Well, the number of men, like when the Bob Neal show came in from Chicago—

Q. I don't mean to interrupt you, or to mislead you, but I am just asking you about the various things that you would have to do as a leader.

Would you have to advise whether the traveling band, for example, had a right to come in, or whether they were being paid properly, or where they were coming from as to distance, that they were traveling? A. No, I never had anything to do with that.

Q. Were you acquainted with the various rules bearing upon when you would have the right to play, and when a traveling band could play, and so on? A. No, I never had anything to do with that, as I know of.



(103) Q. Did you know as to whether or not you would have the right—could you play with a traveling band? A. Probably, if they would hire me, I suppose.

Q. What was the rule with respect to— A. I have played with traveling bands on the stage.

Q. I direct your attention to the constitution of the American Federation of Musicians, which has been received into this case.

Article 18, Section 4 of this document, which I am now showing you, has a provision there, just reading it—and you read it along with me,—it says there, "Traveling members cannot, without the consent of a local, play any presentation performances in its jurisdiction unless a local house orchestra is also employed."

What was your understanding of that rule, in 1945, '46 and '47?

Mr. Kriger: Objection.

A. I never had any talk with anyone about anything like that. Even, you know, the manager or anyone. They all probably took it for granted the orchestra was there because—

Q. Took it for granted what? A. Took it for granted that we were there, because that is the way Mr. Holland said he had orders from New York, not to change the orchestra or do nothing, just keep on going.

Trial Examiner Spencer: Before you go any further, there (104) was an objection to that question, and I don't like objections on the record without any ruling.

Do you wish to have the answer stricken from the record?

Mr. Kriger: No; the answer is all right. I withdraw the objection.

Trial Examiner Spencer: Very well.

Q. (By Mr. Garver) As a member of the local—of course, at that time Mr. Teagle was business manager; is that right? A. That is right.

Q. And I take it you would from time to time confer with him as to various things having to do with the orchestra? A. Well, outside work or something, yes.



Q. Any questions that came up, I take it— A. If there were any questions, yes.

Q. You would take it up with him; is that right? A. That is right.

Q. And of course you were subject to his direction with respect—

Mr. Kriger: I object. I don't think the witness understood that last question.

Mr. Garver: Well, I certainly don't want to get anything from you that isn't right.

Trial Examiner Spencer: Let's pick it up. Get the last question?

(The reporter read the record.)

(105) Q. (By Mr. Garver) Mr. Witness, now that you have heard that read, does that seem to reflect what you want—have you answered my questions the way you meant to? Is it all clear to you now? A. Yes.

Q. What were some of the things that you would discuss with Mr. Teagle from time to time during those years?

A. Well, there has never been too much discussion. That is, probably I would—there has never been too much discussion, because I always probably knew what I wanted, and the men I wanted, and hired out.

Q. Would he ever tell you of particular things that had to be complied with? A. No.

Q. Or ever tell you of jobs that were available for you? A. No. I was hired right by the manager.

Q. By the way, did you go to union meetings at that time? A. No, I very seldom have a chance to go to union meetings.

Q. How would you go about turning in the two per cent? Is that done at the office of the union? A. That was done at the office.

Q. How would you do that? In cash? A. Cash.

Q. And who would you turn that into? A. Mr. Teagle.

(106) Q. What? A. Mr. Teagle.

Mr. Garver: That is all of this witness.

Mr. Rappaport: Just a minute; I would like to ask some questions.

Trial Examiner Spencer: Do you have some questions for the company?

Mr. Rappaport: Yes, I would like to ask a question or two.

Q. (By Mr. Rappaport) As leader, you were known as the contractor also, weren't you? A. As the contractor?

Q. Yes. A. Well, at times they call that contract, yes.

Q. Well, that is the designation that the union gives that job? A. Yes; the leader does the hiring.

Q. And it is your responsibility as contractor to see that the men are paid? A. That is right.

Q. Now, as a contractor, you were familiar with all the rules and regulations of the local; were you not? A. Supposed to be, yes.

Q. You were, weren't you? A. I think I was, yes.

(107) Q. Now, when you referred to at first playing and then afterwards gradually getting away from playing, you were reaching back ten or eleven years, weren't you? A. Going back ten or eleven?

Q. Yes, when the policy of the Palace was a mixed policy, vaudeville and pictures? A. Well, that is where—yes, that is where the changeover started, probably.

Q. That is when the men played? A. Yes.

Q. And then this theatre gradually became a straight picture theatre, didn't it? A. Straight picture?

Q. Yes. A. Well, pictures, yes, and vaudeville.

Q. And then they embarked upon a policy of occasionally hiring a stage band? A. Well, they had vaudeville in there, too, gradually, a turnover. It didn't gradually stop from vaudeville into shows.

Q. Well, in 1945, '46 and '47, the policy of that theatre was a straight picture policy with an occasional band on the stage; isn't that correct? A. That is right.

Q. And those are the times referred to in the exhibit No. 5 that was shown to you? (108) A. Yes.

Q. At that time, when these bands played, your local orchestra didn't play? A. Didn't you say?

Q. Did not play. A. We didn't play for them, no. Occasionally—I don't know, I cannot place just exactly what we did do. I know there were some that we were called down and then they said we didn't—

Q. Well, supposing there were one or two. In the majority of the instances you didn't play? A. Yes.

Q. Now, do you know what a stand-by arrangement is? A. No, there has never been any arrangements.

Q. You have never heard of that? A. Everyone in the world, I suppose, has heard of that.

Q. Do you know what a pay-off system is? A. A what?

Q. A pay-off system? A. No.

Q. You don't know that that is the arrangement by which musicians are paid whether they play or not? A. Well, there were never any arrangements made like that. The manager would always tell when these dates are, and we were hired for those dates. He didn't know, sometimes, whether the acts in front would need a pit band or the other.

(109) Q. As a contractor, did you have a right to make just any kind of arrangement you wanted to, without the consent of the union itself?

Mr. Kriger: I object to that. I think it calls for a conclusion.

Trial Examiner Spencer: He may answer.

A. As long as the manager hired us to be there, we were there.

Q. You haven't answered my question.

Will you please repeat the question, Mr. Reporter?

(Question read by reporter.)

A. Well, that occasion never came up where we had to make different arrangements.

Q. I am asking you whether you considered that you had that right, or was it the union's right to control the contractor's action?

Mr. Kriger: I object to that. That man isn't qualified to answer that.

Trial Examiner Spencer: Now, this witness knows whether he has the authority as a contractor to make contracts without reference to the union, and he may answer whether he did or didn't.

A. No. Well, no; I would live up to union rules, probably.

Q. Now, you knew about this rule that was read to you a moment ago; didn't you, requiring the employment of a local (110) orchestra every time the stage band appeared? You knew that in 1945, '46 and '47? A. Yes, but it never was pressed or anything. That is, if the manager hires you to be there, I don't see why you wouldn't be there.

Q. Well, could you have stayed away, and could you have refrained from collecting the wages for these men, when a traveling band was there in 1945 or '46? Did the union permit you to do that? A. Well, I wouldn't stay away without consulting someone, if we wanted a change of policy.

Q. What would you have done if the manager had refused to pay you during the days that a traveling band was there? A. He never brought up the subject of doing that.

Q. I am not asking you that. A. What would I do? I don't know. It never happened. He always said, "Be there, get your pay."

Q. You mean he told you each time, "Come in and get your pay"? A. Absolutely.

Q. He would send for you each time? A. Gave me the dates ahead, two weeks, three weeks.

Q. That is different. A. No, if he gives you a date to be there, why—

Q. Well, I am asking you, supposing he had not paid you. (111) Then what would you have done?

Mr. Kriger: I object to that. It calls clearly for a conclusion.

Mr. Rappaport: Now, he is a contractor.

Trial Examiner Spencer: Now, he may testify as to his authority as a contractor. That is a hypothetical question.



You say it never arose?

The Witness: It never arose.

Q. (By Mr. Rappaport) Well, if it had arisen, were you privileged to waive that payment? A. No. Well, no; probably after he hired us to be there, I probably would have taken it up with the local, if it would arose.

Mr. Rappaport: May I hear that, Mr. Reporter?

(The reporter read the answer.)

Q. (By Mr. Rappaport) Now, you stopped drawing pay for these engagements when traveling bands were played at the theatre, after the so-called Taft-Hartley Act was enacted, didn't you?

Mr. Kriger: I object to that. That wasn't the testimony of this man.

Trial Examiner Spencer: Well, he hasn't testified to it, yet, but he is being asked if that was the fact. Was that the fact?

The Witness: I didn't get that.

Trial Examiner Spencer: Read the question.

(112) Mr. Kriger: I hate to interrupt, but his testimony was that there was another man replaced him, some months, some period of time before the Act.

Trial Examiner Spencer: Don't you think the witness is competent to answer this question, without you telling him what to answer?

Mr. Kriger: No, he is competent, but let me make one observation in the record. Mr. Houser is their witness, and they are continually asking him leading questions.

Trial Examiner Spencer: That is right.

Mr. Kriger: Now, I hate to object, but I would like to insist that they ask the witness, rather than cross examine him.

Trial Examiner Spencer: Well, you haven't raised the question, before.

Mr. Kriger: I am at this time.

Trial Examiner Spencer: All right. Now, do you have the question that was asked you in mind, Mr. Houser, that you haven't answered yet?



The Witness: Didn't I answer it to their satisfaction?

Trial Examiner Spencer: I don't think you answered at all.

Mr. Rappaport: Well, I think I can simplify it by withdrawing the question and asking another one.

Q. (By Mr. Rappaport) Without fixing the date, do you know (113) about when the Taft-Hartley Act went into effect? A. I can't quite hear you back there.

(The reporter read the question.)

Trial Examiner Spencer: Counsel, I think we can expedite this by giving him the date on which it went into effect.

Mr. Garver: Perhaps this is the way I can perform my function. The Taft-Hartley Act was passed on June 22, 1947, and became effective August 22, 1947.

Q. (By Mr. Rappaport) Referring to that time, do you know whether the Palace Theatre paid any local orchestra at the same time that bands appeared on their stage, after August 22, 1947? A. No, I wouldn't know.

Q. You don't know that? A. No.

Q. Did you ever hear that discussed in the union? A. No, I never—very seldom get to a union meeting.

Q. Have you known of or participated in any way in any of the negotiations that have been going on with reference to music at the Palace Theatre recently? A. No.

Q. You haven't discussed that with anyone? A. No one, no. I did get a letter from—a questionnaire from Washington, some time back, which I told the same story I am telling here. I don't know what Board that was, or something (114) —of my history connected with the theatre.

Q. (By Mr. Garver) Do you know who you got such a questionnaire from? A. I don't know whether it was the Government—I took it to be from the Government.

Q. I see. But you have not been interviewed by me or anybody from our Cleveland Office of the National Labor Relations Board, or anything like that? A. No.

Q. Is that correct? That is true, isn't it? What I am saying is true? A. Yes. Well, I never seen you before.

Q And you are correcting your testimony in that connection. It was a little bit confused to me. Is that what you meant to say? A. That is right.

Q Now, if I may back track, Mr. Gamble, with respect to the Standard Theatres, who buys the films and arranges the stage attractions for that organization? A. Gamble Enterprises.

Q Now, who is in charge of the labor relations and setting the policy for Gamble Enterprises? A. Mr. Ted R. Gamble.

Q And is he related to you? A. He is my brother.

Q And where does he maintain his offices at? A. New York City.

(142) Q And who is in charge of the policy of labor relations for the Standard Theatres Corporation? A. Mr. Ted R. Gamble.

Q And who is in charge of setting the policy and the labor relations policy for the Greater Indianapolis Amusement Company? A. That would be done jointly by Mr. Ted R. Gamble, Mr. Fred Dolly and Mr. D. Long, Mr. Dolly and Mr. Long being the principals of Fourth Avenue Amusement Company.

Q By the way, what office handles the licensing arrangements of the films for all these various theatres referred to in the stipulation of all the companies? A. Gamble Enterprises, Inc.

Q They handled all of the licensing for all the films of the various theatres; is that right? A. That is right.

Q Now, what about the stage shows and bands and so on which may appear at these various theatres, some 41 of them, I believe, on the stipulation? Who arranges and handles all of that? A. Gamble Enterprises.

Q And makes all the contracts for them? A. That is right.

Q By the way, as manager of the Palace Theatre in Akron, what are your duties? A. To cooperate in the booking of pictures, to make recommendations (143) as far as stage shows and screen attractions are concerned; supervise the personnel, keep the records, supervise the

advertising and exploitation, and general programming of our operation.

Q. And in connection with your position, are you acquainted and have you become acquainted with all the various records and business records that the local office here maintains? A. Particularly so since 1947, and for some few months prior to that time, in reviewing them when I first came here to review the records to acquaint myself with the policy of the theatre, and exactly what our picture was at the time I took over the management of this theatre.

Q. You speak of the "policy" of the theatre. Will you trace, since about 1941, in your connection with this company, what was the policy of the theatre with respect to stage shows, vaudeville and so on? A. Mr. Garver, we did not own this theatre in question in 1941. This theatre was taken over by Gamble Enterprises in March of 1947.

Q. Do you know what kind of policy they had in March of 1947 with respect to— A. I do.

Q. Will you describe that, please? A. The source of my information, I might say, was the former general manager of the company, the gentleman from whom we (144) acquired the theatre, Mr. Harry Katz, now deceased.

Mr. Kriger: May I enter an objection at this point, on the grounds that his answer will be clearly hearsay; the witness not having the information of his own knowledge.

Q. (By Mr. Garver) Would your records that are in your custody have shown you the method of operation with respect to stage shows? A. They do, Mr. Garver, and I can just as readily give the information you have asked me from the source of my information in the records that are in my possession.

Trial Examiner Spencer: Well, I think that counsel is correct in objecting to have a policy established here on hearsay, so insofar as his objection goes to that, I will sustain it.

But I assume, from your later questioning, that you want to base your questioning on something other than

and that is turned over to the union. The question of who puts up the money is—that is for the economist.

Q. (By Mr. Kriger) Well, the fact is, is it not, Mr. Houser, that the money was turned over by the members of your band to you? A. Yes.

Q. And that was two per cent of their earnings? A. Yes, that is right.

Q. Or two per cent of the scale, was it not? A. Two per cent of the scale, yes.

Q. And you turned that into the union? A. Yes.

Q. As additional dues? A. Yes.

Q. Now, at the present time you are leading another orchestra, are you not? A. That is right.

(122) Q. And do you deduct a one per cent tax? A. That is right.

Q. From each of your people? A. Each member.

Q. And you turn that over to the union? A. Turn it over to Mr. Teagle.

Q. Now, during the time that you were employed at the Palace Theatre as leader of the band, did you ever have any other work? A. Well, I teach in school privately.

Q. But did you have any other— A. No, I wouldn't.

Q. But did you have any other orchestra or band work? A. No; just odd jobs came up, you know, between shows, which weren't very many.

Q. And during the time you were engaged for a particular show at the Palace Theatre, whether you played or whether you didn't play, I will ask you whether or not you were available for work? A. Oh, yes, all the time. I would be there practically more shows than I missed. I will always be there.

Mr. Kriger: I think that is all.

Trial Examiner Spencer: Any redirect?

Mr. Garver: Yes.

(123)

# RE-DIRECT EXAMINATION.

Q. (By Mr. Garver) In 1945, '46 and '47, there was a point at which the radio programs ceased; is that right? The station went away? A. Yes.



Q. And after the station moved away, from that point on there was no further radio broadcast; is that right?

A. That is right.

Q. The only radio broadcast that you remember, as I understand your testimony was with WJW? A. I think it was WJW. Right across the street from them.

Q. Then there was this period of time in 1945, '46, and '47 when there would sometimes be the stage show and the movie; is that right, at the theatre? A. Yes."

Q. Then there were times when there were only movies? A. Yes.

Q. Now, there would also be a succession of weeks when there would be only movies; is that right? A. Yes, it would be months, lots of times.

Q. Now, when it was only movies, would your band continue to have rehearsals? A. Yes.

Q. Even when it was only movies? A. Yes.

Q. And where would those rehearsals be held? (124)

A. The Palace Stage, sometimes in the pit. It all depended on—well, lots of times when they had the stage cluttered, we would be up there, sometimes in the pit. Usually, when we were on the air, they would say, "direct from the pit."

Q. Well, I am not talking about that. We are no longer on the air; the station is gone, and the stage shows are gone, and there is nothing going on in the theatre except movies. You were still having rehearsals. A. Yes.

Q. And what would you be rehearsing? Anything you wanted to play? A. Anything that—I have a lot of specials, and anything I would want to rehearse.

Q. In other words, the premises there were available to you to come in and play? A. Yes.

Q. Isn't that all it amounted to? You weren't getting paid those weeks? A. No.

Q. In other words, you were rehearsing, and no pay? A. On my own.

Q. In other words, you were just rehearsing on your own? A. They call it "Mark Houser's Palace Theatre Orchestra." Everyone knew it as that.

Q. You mean to say you played other engagements around town (125) during that time? A. You mean during the picture?



Q. Yes. A. Well, odd jobs. I would always take odd jobs.

Q. Now, I want to get this clear in my mind; During the period of time when there would only be movies in the theatre, did you and this group of nine men, or any group of nine men, play as a band any place else in town?

A. Yes, I played, sure; I had to play wherever I got a job.

Q. Would it be the same group that had rehearsed?

A. Not necessarily, no.

Q. Just any group you would get together? A. Yes.

Q. All right. Let's say that the movies are on, now, and a stage show is brought in. Perhaps Duke Ellington, Vaughn Monroe or Tommy Dorsey.

Did you rehearse for every single show before it came in? Or were there instances that—well, what was the situation? A. Well, we rehearsed.

Q. For every single stage show that came in? A. Well, there is no music for them. We kept on rehearsing.

Q. You just kept on with your rehearsing, even when there was movies; is that right? A. Yes, that is right.

Q. And then you might keep on regardless of whether there were (126) movies or stage shows; it made no difference? You had the privilege of coming in there and holding rehearsals? A. As long as the manager didn't fire me, I would be there probably. When he hired the other fellow, I wasn't there. I couldn't go on rehearsing, then.

Q. Was there ever a time when a traveling band came in, and you did not rehearse right together with them? A. Well, we don't—no, that is, we don't rehearse with them, unless the acts in front of them want the music. Sometimes we would play curtain up and curtain down. Is that what you mean?

Q. No, I am talking about rehearsals. If I were to name these bands, could you think of any of them that you were rehearsed with during 1945, '46 and '47?

For example, did you rehearse with—together with Tommy Dorsey? A. No.

Q. Did you rehearse together with Vaughn Monroe? A. No, not with.

Q. Did you rehearse together with Duke Ellington?  
A. Not Duke Ellington. We did with several—not several, but some.

Q. But in other words, you did not rehearse with those people; is that right? A. No, not those, no.

(127) Q. But you got paid for the weeks when those particular bands were playing; that is true, isn't it? A. We were hired for that weekend.

Q. Then what I am saying is true, you were paid for those weeks, even when you had not rehearsed with the particular band? A. That is right. We were hired before the other band came in.

Mr. Garver: All right; that is all.

Trial Examiner Spencer: When did you last act as leader at the Palace Theatre?

The Witness: Last?

Trial Examiner Spencer: Yes.

The Witness: He has the date there when they hired Ange Lombardi.

Trial Examiner Spencer: Do we have that?

Mr. Kriger: It is in the record.

Trial Examiner Spencer: I am not sure it is clear.

Mr. Garver: Let me clarify that.

Q. (By Mr. Garver) The last time that is shown on G. C. No. 5, down here for February 23, 1947, which is under your name, is for the McCoy—was that a band? A. That is a band.

Q. Did you rehearse with the McCoy band? A. No, we didn't rehearse with them.

(128) Q. But you got paid as if you had worked that week, according to that? Does that conform with your recollection? A. The last two or three, I can tell you exactly what transpired between the manager and I.

Q. Go ahead. A. All right. The last three weeks, when he asked me about whether we had the contract, and I said, "No, we don't have a contract" he said, "Well, then, I can lay you off and get another band."

And I said, "Yes, and I can quit also." So, he said, "Well, since you are such a good fellow, I will give you two more of these stand-bys." That is what he called them.

Q. Did you argue with him when he called them "stand-bys"?

Mr. Kriger: I object to that.

Q. (By Mr. Garver) Well, you are relating that conversation you had with him, aren't you? A. Sure, and of course anyone connected that way would call them that.

Q. All right. Let me ask you something: Then the last week, or period you got this pay for was this week ending about February 23, 1947; is that right? A. Well, I can't figure it. I don't know how many—

Q. Is that right? A. About that many, I would say. I don't know the exact figure.

(129) Q. Now, after you were through with what he called the stand-by arrangement, did you continue these rehearsals in the theatre? A. No, I was out, then.

Q. Do you know whether Lombardi began rehearsals in the theatre? A. I don't know a thing about that.

Q. So far as you know, he might never have had another rehearsal in the theatre? A. So far as I know. I don't know.

Mr. Kriger: Objection.

Trial Examiner Spencer: You make objections, I have no opportunity to rule on them, the witness has already answered. Now, do you want to press your objection?

After this, Mr. Witness, if you hear somebody say "Objection," just don't answer until there is a ruling.

Mr. Kriger: May I ask Mr. Houser one or two more questions?

Trial Examiner Spencer: Well, let's get through with this.

#### RE-CROSS EXAMINATION.

Q. (By Mr. Kriger) On those occasions when you didn't rehearse with Duke Ellington, Vaughn Monroe, and

so forth, if the manager told you not to come, would you have been there ready to rehearse?

(130) Mr. Garver: Objection.

Trial Examiner Spencer: What is the objection?

Mr. Garver: What difference would it have made whether they could have come down there? The fact is, there has been no demonstration that they were asked to.

Well, I will withdraw the objection. I think it is all part of the picture.

Trial Examiner Spencer: While you were available, did you hold yourself available to come down?

The Witness: Every time I would be there myself, personally. When the manager would say, "You don't have to be here," I would be there anyway.

Q. (By Mr. Kriger) One other question: Isn't it a fact, Mr. Houser, that it is necessary when you have organized bands, for them to frequently hold rehearsals?

Mr. Rappaport: I want to object to that, because that isn't part of the issue here at all.

Trial Examiner Spencer: You are talking about a general practice of bands?

Mr. Kriger: That is right.

Q. (By Mr. Kriger) When you have a band, in order to keep the band in business, for them to hold frequent rehearsals? A. Absolutely.

Trial Examiner Spencer: He may answer.

The Witness: Absolutely.

(131) Q. (By Mr. Kriger) Now, one more point: Did you regard your employment at the Palace Theatre at that time as a permanent arrangement?

Mr. Garver: I object. There has been no foundation for it. The evidence is to the contrary; it wasn't a permanent arrangement, because when they had movies, there was nothing. The only thing that has been demonstrated is that was this—I don't want to use the word "stand-by" except that is what it referred to.

There was this arrangement of being paid for certain weeks. That is all that has been in here. There is no foundation for this other picture of continuity.

Trial Examiner Spencer: Well, if you can relate that to some more definite period?

Mr. Kriger: Well, withdraw the prior question.

Q. (By Mr. Kriger) Prior to the time you were dismissed—

Mr. Garver: I will even object to the word "dismissed."

Trial Examiner Spencer: Well, let the counsel finish his question.

Q. (By Mr. Kriger) Prior to the time that you were dismissed and replaced by this other man, did you regard the band as the Palace Theatre Orchestra? A. Yes.

Q. And did the people in this community regard that band as the Palace Theatre Orchestra?

(132) Mr. Rappaport: Just a minute. I object to that.

Trial Examiner Spencer: Sustained.

Mr. Kriger: That is all I have.

Trial Examiner Spencer: Have you anything more?

Mr. Garver: Just a couple questions and I will be through, too.

#### RE-DIRECT EXAMINATION.

Q. (By Mr. Garver) You say that during 1945, '46 and '47 you were available. Of course, even during those weeks that you were getting this so-called stand-by pay for, you were actually working somewhere else; isn't that true? A. Not while I was stand-by, no. I wouldn't take a job under stand-by.

Q. Weren't you teaching at that time? A. I was teaching privately, yes.

Q. Well, what hours of the day would you be teaching? A. I would teach three of the schools in the morning, to fit my own convenience. They would call them out of classes to give the lessons.

Q. Well, what were you doing, let's say, during these four days in a week that you were getting paid? What would you be doing during the afternoon? Where would you ordinarily be, or where were you ordinarily? A. When the show was on?



Q. Well, Tommy Dorsey is on, but you are off. Now, what would (133) you be doing? A. Well, I would be down there at rehearsals, and maybe stop in and talk to some fellows, sometimes, but then other times the manager would say, "Stay away" and I would stay away.

Q. Well, here is Monday afternoon, and Monday night; Tuesday afternoon and Tuesday night, right on through the week. You were doing whatever you wanted to; isn't that right? A. Well, there was no show on at that time; that is right.

Q. Now, what about these other nine men? According to this record, there was Paul Kares, Reginald Light, Henry Chernin, Robert Lose—and by the way, there was even a Mark Houser, Jr. A. Yes.

Q. Is that your son? A. A very good clarinet player.

Q. And you had him on this little stand-by group? A. Because he rehearsed. He was a musician.

Q. And he was getting paid, too? A. Well, he is a good musician.

Q. By the way, was your son working during these periods when he was getting paid for stand-by?

Mr. Rappaport: I am going to do the unusual thing and object to this line of questioning, because I don't think availability has anything to do with this case at all. Whether (134) they were or were not available has nothing to do with this case at all. The question is, did they or did they not play, and did they have a right to demand pay for something that wasn't needed.

Trial Examiner Spencer: Well, sir, different people have different theories about these cases, and I think I will permit the answer to the question.

Mr. Garver: I am not so certain that the material is highly relevant, but it is part of the picture that has come up in the examination, and I would just like to fill it out.

The Witness: They were all available, whenever there was—

Trial Examiner Spencer: Well, that wasn't the question.

Q. (By Mr. Garver) What was your son doing during these weeks that he was getting paid? A. What dates were they? I could probably tell.

Q. Here is a week of— A. How many times was he on there?

Q. Well, I have got a couple periods he was on, right in front of me. I will give you more of them. The early part of 1947. A. I don't recall, but I know he wasn't working at any steady job at the times. He was off, right out of the Army.

Mr. Garver: I don't think there is need of prolonging this. That is all.

(135) Q. (By Mr. Rappaport) Where is Local No. 24's office, with reference to the Palace Theatre? A. Right now it is on the next entrance.

Q. It was in '45, '46 and '47, wasn't it? Right next door to the Palace Theatre, wasn't it? A. Well, I don't know. They had been down at the Everett Building, hadn't they? Then they moved down there? I don't know what year they moved.

Q. Do you know whether or not the business agent has the right to go into the theatre at any time he wants to, as a business agent? A. I don't know about that.

Trial Examiner Spencer: Well, answer the question. Do you know?

Q. (By Mr. Rappaport) Do you know that? A. No, I don't know.

Q. Do you know whether he did come into the theatre frequently when these bands were there? You say you were there. A. I don't know.

Q. You don't know? A. I imagine—

Trial Examiner Spencer: Well, just answer what you know. If you don't know, don't answer.

The Witness: I don't know.

Mr. Rappaport: That is all.

(136) Trial Examiner Spencer: You are excused.

(Witness excused.)

Trial Examiner Spencer: Let's take a recess.

(Recess taken until 1:00 o'clock, p.m.)

(137) After recess.

(Whereupon, the hearing was resumed, pursuant to the taking of the recess, at 1:00 o'clock, p. m.)

Trial Examiner Spencer: On the record, Mr. Reporter.

RONALD W. GAMBLE, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Garver) What is your name, sir? A. Ronald W. Gamble.

Q. And what is your address? A. 27 South Union Street, Akron, Ohio.

Mr. Garver: Mr. Examiner, before going forward with this witness, so the record may be clear. I just want to bring to your attention that this morning there was some testimony about General Counsel's Exhibit No. 5, and payment for shows and so on, and I just bring to your attention, so that it will be noted, that that exhibit shows that the last actual engagement for which there was payment was July 2, 1947, and then the one prior to that was June 29, 1947.

I make that note because, in the "Date Paid" column there is reference to later dates. But of course those dates, as was explained, refer to when the two per cent was paid into the union office, and on the other hand, it is the ending column which shows when the particular engagement ended that it (138) is about.

Trial Examiner Spencer: Very well. Thank you. I assume that there were no payments at a later date than shown on that exhibit, then? No payments of this character?

Mr. Garver: Well, I think that will become demonstrated through this witness' testimony.

Trial Examiner Spencer: Very well, proceed.

Mr. Rappaport: Can it be stipulated?

Mr. Garver: Is that the case, Mr. Kriger?

Mr. Kriger: There are no engagements other than shown on there, so far as we know.

Mr. Garver: On G. C. No. 5?

Mr. Kriger: No payments of the tax other than shown on there.

Mr. Garver: I think I would like it clarified through this witness, if I may.

Q. (By Mr. Garver) Mr. Gamble, what is your position with the Palace Theatre in Akron? A. Managing Director of the theatre.

Q. And how long have you been here in Akron in that capacity? A. Since September, 1947.

Q. And prior to that time, were you also connected with the same organization? A. Since 1941, with the exception of two and a half years I spent in the service.

(139) Q. So that at least since 1941 you have been in the theatre business in a managerial capacity? A. And with this same company.

Q. Just to clarify the operations of the Gamble Enterprises, Inc., concerning which there is a stipulation, I will ask you a few questions about that.

Here is General Counsel's Exhibit No. 2.

Mr. Kriger: Is that the stipulation?

Mr. Garver: This is the stipulation.

Q. (Continuing) There is reference to some four theatres which are operated by Gamble Enterprises. Will you explain a little more fully in detail the relationship of Gamble Enterprises with two other companies named in this stipulation?

There is one, for example, the Standard Theatres Corporation, and the stipulation shows that they have some 26 theatres. What is the connection between Gamble Enterprises and Standard Theatres? A. Gamble Enterprises holds 50 per cent of the stock of Standard Theatres. We exclusively operate those theatres.

Q. I didn't hear what you said. A. We directly and exclusively operate those 26 theatres in which we hold



this 50 per cent stock, and as shown in this, the other 50 per cent is held by Mr. James Costen, of Chicago, Illinois.

Q. So it is Gamble Enterprises which actually manages and (140) operates the 26 theatres of the Standard Theatres Corporation? A. In their entirety.

Q. And now with respect to the other company named in the stipulation, the Greater Indianapolis Amusement Company, which operates, according to the stipulation, some four theatres in Indianapolis, what is the relationship between Gamble Enterprises and that organization?

A. It is a joint operation; the other 50 per cent of the stock is held by the Fourth Avenue Amusement Company of Louisville, Kentucky.

The operation, we maintain a city manager, a city office. The city manager would supervise the four theatres under the joint supervision of Fourth Avenue Amusement, and Gamble Enterprises.

The Gamble Enterprises buys and books all of the films for Fourth Avenue Amusement Company, and in most instances buys their supplies of all nature.

Q. Now, you said Fourth Avenue, and that is not referred to in this stipulation. I asked you about the Greater Indianapolis Amusement Company. Is that the same organization sometimes known as the Fourth Avenue? A. Fourth Avenue own 50 per cent of the Greater Indianapolis Amusement Company.

Q. Oh, that is clear to me. A. And Gamble Enterprises own the other 50 per cent.

(141) Q. In other words, the stock of the Greater Indianapolis Amusement Company is owned by two companies? A. Yes, sir.

Q. On the one hand, the Gamble Enterprises, and on the other hand, the Fourth Avenue Company? A. That is right.

Q. To see if I am clear, now, with respect to films, do I understand you correctly to mean that the Gamble Enterprises buys the films for the Greater Indianapolis Amusement Company? A. That is right.



Mr. Garver: Yes. I recognize the point of Mr. Kriger's objection, naturally.

Trial Examiner Spencer: Very well.

Q. (By Mr. Garver) Now, on the basis of the records, what was the method and what had been going on at the theatre with respect to stage shows?

Mr. Kriger: Objection. The basis of my objection is the records haven't been properly qualified in a number of ways.

(145) Trial Examiner Spencer: Well, if you want to press that, I will have to instruct Mr. Garver to lay more foundation for it.

Mr. Kriger: His testimony would still be a variety of hearsay, even if based on records.

Trial Examiner Spencer: Well, let's find out what kind of records they are. I think such of his testimony as is based on his knowledge of the records, I will receive. I do want to know what those records are.

The Witness: Mr. Garver, may I have the payrolls?

Mr. Garver: You may come over to the table and get anything you want.

The Witness: They are General Counsel's Exhibits.

Mr. Garver: All right you can have these exhibits which have been introduced in evidence, payrolls, and if there are any other documents you have on the table, you can come over and get those.

Q. (By Mr. Garver) Did you have, in connection with your office, records of what movies had been shown at the theatre? A. Yes, sir.

Q. Did you have records of what stage shows had been shown? A. Yes, sir.

Q. Did you have records of what bands had made appearances? A. Yes, sir.

Q. All right. Now, on the basis of your knowledge of what (146) the records show along the lines I have just questioned you, what was taking place at the theatre during the early part of 1947? A. Using these payrolls—

Mr. Kriger: Pardon me; I would like to enter an objection. Just a moment, while I confer with my client.

Well, withdraw the objection.

Trial Examiner Spencer: All right; go ahead.

A. (Continued) Using these payroll forms, which are a standard theatre payroll form, one which is still in use in the theatre, an identical form, these are for our payroll records for certain weeks between January 22, 1947—

Q. Excuse me. I dislike interrupting you, but you are now speaking about the payroll records which have been introduced into evidence here as G. C. No. 6 and following, is that right? A. That is right, sir.

Q. Go ahead. A. These are records from January 22, 1947, for various weeks, ending with July 2, 1947, selecting the weeks specifically which apply to the period before we took over the operations of the theatre I find one for January '22, 1947; one for the week ending January 29, 1947, and one for February 26, 1947.

Those three periods, being at a time prior to our acquiring the theatre. If I might qualify what I am (147) going to say here, every theatre has what is known as a policy, and we did not, until later in the year—which I will cover in subsequent testimony—we did not change the policy of that theatre when we took it over.

When we acquired the theatre, we continued to use, continued to perform in identically the same manner as our predecessors. It was a straight picture policy, with an occasional appearance of a traveling name band on our stage.

After acquiring the theatre, we played—

Q. When you say "a straight picture policy" of course you mean that all that was being shown was movies? A. Movies. After acquiring the theatre, we continued to play 12 additional stage shows. The last stage appearance was on November 12, 1947.

Q. Now, when you say you played stage shows, would you have had movies and stage shows? A. Movies, and a traveling name band on our stage.

Q. Now, since the date of the last show or name band that you just spoke about, has there been any further stage show or name band up to date? A. To this time, no.

Q. Now, according to your records, can you tell us when was the last time that payment was made for a group of local musicians?

Mr. Kriger: Pardon me—a group of what?

(148) Mr. Garver: I asked him when was the last time payment was made for a group of local musicians.

A. The week ending July 2, 1947.

Q. July 2, 1947? A. That is correct.

Mr. Garver: And note, Mr. Examiner, that conforms with the date that I previously gave you as shown on the other document.

Q. (By Mr. Garver) Now, since July 2, 1947, has any further payment been made for local musicians? A. None.

Q. However, since July 2, 1947, you have had some stage shows? A. We have played seven stage shows since that time.

Q. Can you describe what those stage shows consisted of? Did you have any local musicians in connection with them? Or explain them. A. They were traveling name bands, Mr. Garver, appearing July 16th, weekending August 6th, weekending August 27th, weekending October 15th, weekending October 22nd, weekending November 5th, weekending November 12th.

Q. As indicated by you, you did not use any local musicians in connection with those stage shows at all? A. We did not use any local musicians during those engagements.

(149) Q. Perhaps I did not clarify this, Mr. Gamble: Was any payment made for local musicians after—what was the last? A. July 2nd.

Q. In other words, there was payment made on July 2nd for local musicians? A. That is right.

Q. But after that time, even though—well, you made no further payments for local musicians? A. That is right.

Q. Didn't use them and did not pay them? A. We did not pay them.

Q. Now, directing your attention to the fall of 1947, did you have occasion to know Mr. Teagle at that time? A. I did.

Q. And did you have an occasion to meet with Mr. Teagle or discuss with him anything having to do with what your policy or method of payment for musicians should be? A. I did.

Q. Tell us what those conversations were. Where did they take place? A. In the latter part of October, Mr. Teagle came to my office in the Palace Theatre, and requested of me that we employ a house or pit orchestra for the Palace Theatre.

Q. By the way, at that time were you having a stage show of any kind going on? (150) A. There was one scheduled for appearance on November 20, 1947.

Q. In other words, you had already contracted for the appearance of a show for November 20th? A. That is right.

Q. What band or show was that? A. That was the Ray Eberly show.

Q. All right. Now, if you will return, please, to your conversation with Mr. Teagle, what conversation did you have with him concerning the Ray Eberly show? A. He requested of us that we employ a house or pit orchestra to appear at the theatre at such times as we would have a traveling name band on our stage.

I asked him what services they could render, what could they conceivably do, what need would we have of them, and what was he using as a basis for his suggestion or request.

At that time he told me that they could play intermissions, overtures, chasers before and after the show.

I pointed out to him that the theatre had had a policy of paying for stand-by musicians for a good many years, and to my knowledge, and in such time as we had operated the theatre, even though we had paid for such services, and that we were entitled to them, that we had never used them; that we had no need for them; that actually they would be an interference in the operation of our theatre.

(151) He continued to press for the employment of such an orchestra, and stated at that time two things

specifically which stay with me: One was that if we did not employ a house orchestra, that we would not be permitted to engage any further traveling name bands for appearance on our stage, and when I pointed out to him that we had only one such band at that time under contract, and that if he would allow it to play, that we would employ or contract for no further engagements until we could reach such agreement with him, he stated that that would not be acceptable to the union, and besides, Mr. Eberly had not filed a copy of his contract with the union, something which I did not understand then; something which I have made numerous inquiries of since, and in view of Mr. Teagle's statement from the stand yesterday, that no contract is required to be filed, I still fail to understand why that was a reason for cancelling the Ray Eberly show.

Mr. Kriger: I ask that the latter part of that be stricken as not responsive, other than direct reply to what occurred at the meeting.

Trial Examiner Spencer: The last statement is a volunteered statement. It may be stricken.

Q. (By Mr. Garver) This one performance that you wanted to go ahead and have, and that you were talking to Mr. Teagle about, was the Ray Eberly show? A. It was the Ray Eberly show.

(152) Q. What was Mr. Teagle's position with respect to your request that he permit you to have the Eberly show go on? A. He did not, Mr. Garver—

Q. Did he in any way indicate that it was all right for you to go ahead with your Eberly show? A. He specifically told me that we would not be allowed to go along with the Ray Eberly show unless we acceded to their request.

Q. Did the Ray Eberly show fulfill or keep its contract with you? Did they come out? Just what happened? A. I told Mr. Teagle that I would get in touch with my New York office, make known his demands to them, and that I would be in touch with him just as soon as I had a reply from them.



My New York office advised me that we had no need for such an orchestra; that we had had access to their services for years and had not used them, and that we would not accede to the union's demands, and to book in a substitute film program in anticipation of the Eberly show not showing up.

Q. Now, let me ask you this question: Did the Gamble Enterprises, in any way, notify the Eberly show that it did not want them to come out? A. No, sir.

Q. Did the show come out? A. No, sir.

(153) Q. Were you notified as to whether they were going to come out? A. Yes, sir.

Q. And by whom? A. From two sources. We booked the Ray Eberly show through the Edward Sherman Agency in New York City. They advised us that they had had communication from Mr. Petrillo that the Eberly show—

Mr. Kriger: I object to what was said.

Mr. Garver: In the normal course of business the witness may testify as to what information was given to him.

Trial Examiner Spencer: He may. Objection overruled.

A. (Continued) The Edward Sherman Agency advised us that they had communication from Mr. Petrillo's office that the Eberly show would not be allowed to appear. Eberly at that time was appearing for us at the Circle Theatre at Indianapolis, and our city manager, Mr. Ken Collins, in Indianapolis, called me long distance and told me that Ray Eberly—

Mr. Kriger: I object to what was said by a third person.

Trial Examiner Spencer: Overruled.

A. (Continuing) —that Mr. Eberly had advised him that he would not be able to appear at the Palace Theatre, and they did not appear.

Q. By the way, was there any other kind of act that you intended or were scheduled to appear with the Eberly band? (154) A. Yes, sir.

Q. What were they? A. Marian Hutton, a vocalist and comedian, Pat Henning, monologist and The Robert Sisters & White, a novelty act.

Q. Did those particular acts show up at the theatre at the time they were supposed to? A. Only two of them, Pat Henning and The Robert Sisters & White.

Q. Did you put on any kind—did you use them, or put on any kind of stage show? A. It would have been impossible to do so. We did not.

Q. For what reason? A. They would not have been an attraction without the Ray Eberly band to back them up on stage. It would not have been a creditable performance. It was not something that a theatre of the caliber of the Palace Theatre could present on their stage and charge admission for.

Q. Did you have any further meetings with Mr. Teagle concerning this request that he was making of you, and what you wanted to do? A. After the Eberly show, there was nothing further done until—it would be some time the latter part of 1948, or the first part of 1949. Subsequently, then, to that date, there were various meetings with Mr. Teagle.

Q. Where did some of those meetings take place? (155) A. All of those meetings have taken place in Mr. Teagle's office.

Q. And who has been present at those meetings? A. There were times when it was only Mr. Teagle and myself, with perhaps his secretary, who had no part of what was going on in the office.

Mr. Reg Light has been there on one or more occasions. There was a time when we met with several members of our organization and their entire negotiating committee.

Q. During the first part of those meetings, how did they come about? What were they for? What did you want and what did he want? A. It had been the policy of the theatre, during the months that we operated it, from the time we took it over until the Eberly show, to book in these occasional bands. The public seemed to like them;

it was a policy ~~that~~ it was our desire to continue if we could. We were unwilling to enter into any sort of payoff system.

Mr. Kriger: I ask that that be stricken.

Trial Examiner Spencer: Now, Mr. Garver, do you want to get what was actually said, and what was done in these conferences, or do you want the witness' summation?

He appears to be giving a summation.

Q. (By Mr. Garver) Mr. Gamble, so far as possible, I would like you to confine yourself to what took place at these (156) meetings. What you were asking them and what position they were taking with you. A. I have repeatedly requested of Mr. Teagle that we be allowed to book in occasional traveling name bands at the Palace Theatre. His position, to begin with, as I have stated, was that we should employ a pit orchestra to play, intermissions and chasers, overtures and chasers, and at one of the later meetings he made the suggestion that the orchestra sit in the pit and play for whatever acts might be making their appearance with the traveling name band.

Q. Let's see if I understand you. The first position was—or at least at that time—was that the local band be in the pit of the theatre—that is, below the stage, or just in front of the stage, while the name band or traveling band was on the stage? A. That is right.

Q. And you had conversations with Mr. Teagle as to what the local band would be doing in the pit? A. That is right.

Q. And what was that? Even if it means backtracking, I would like to get that.

Mr. Kriger: I would like to know when and where the conferences were held in question that he is referring to.

The Witness: I can cite one instance, specifically.

Q. (By Mr. Garver) Go ahead. (157) A. On May 8th—

Q. No, I just want to get it with respect to the testimony up to this point. Have you had discussions up to

the point you have testified about, with Mr. Teagle, as to what the local band would do in the pit? I think you already testified about overtures and chasers. I just want you to clarify that. A. Mr. Garver, if I understand you correctly, you want me to specify a time and place?

Q. No, just tell us firstly, you had these conversations at the time of the Eberly show? You remember? A. Yes, sir.

Q. Now, at the time of the Eberly show, what was Mr. Teagle's position with respect to what the local band would do in the pit? A. At that time, his suggestion and recommendation was that we employ an orchestra to be in the pit to play overtures and intermissions. That is, a small musical prologue before the actual stage show went on, and some music after the show while the people were filing in and out of their seats.

Q. All right. Now, you are indicating that when you met with him in these further meetings in the latter part of 1948 and '49, there was some additional position that he took? A. That is right.

Q. Now tell us what that was. (158) A. Specifically, on May 8, 1949, Mr. Rappaport, Mr. Furman, Mr. Lou Gamble and myself met in Mr. Teagle's office.

Mr. Kriger: Pardon me; who was the third one?

Mr. Rappaport: That was Lou Gamble.

A. (Continuing) We met in Mr. Teagle's office, and present for the union was Mr. Teagle, Mr. Reg Light, and Mr. Dilley.

In our conversations, they specifically recommended—and the word "jurisdiction" was used—that the local union had jurisdiction over the acts, as they preferred to call them—that is, the specialized performers who might be accompanying the band, and that the local orchestra be in the pit; that the traveling name band on the stage should give their performance, and when the specialized performers came out, that the orchestra in the pit be allowed to play for them.

We again pointed out to them that the national reputation of these name bands, that their vocalist had been

traveling with them in many instances for years, and were equally well known, many of their performers had been with them for years and were equally well known as the band and the band leader, and that it was an impractical suggestion; that that course had been open to us all during the years in which we had paid stand-by, but from a program standpoint for entertainment—all during the years the theatre had paid stand-by that that had been open to the theatre and they had never chosen to do so.

(159) We also stated that we did not believe that the audience would accept it as a creditable performance; it had not been done to our knowledge, and we have never done it in any of our theatres; that we did not see the validity of the request.

We stated that it was unnecessary interference with the proper operation of the theatre, based upon its past records, and we again refused to accede such demands.

I might like to say here, if I may, that before we left that meeting that day we drew up a tentative agreement which was initialed, and it was definitely understood that it was an agreement, and that it was to be submitted to the executive board of the union for approval, and that I was to be notified by Tuesday—this meeting took place on a Sunday, I believe—I was to be notified by the following Tuesday, and was notified that they had taken no favorable action upon the tentative agreement.

Q. Can you identify General Counsel's Exhibit No. 17 and tell us what you know about it? A. That is the agreement. It was in my possession until turned over to you.

Q. And was that agreement available at this May 8th meeting? A. This was the culmination of the May 8th meeting. After this was typed up and initialed, the meeting broke up immediately.

Q. I didn't quite get you about the typing. Where was that typed up? (160) A. In Mr. Teagle's office.

Q. At the end of the meeting? A. At the end of the meeting it was typed up. After it was typed up and initialed, the meeting was adjourned.



Q. In other words, as I understand you, that was the understanding reached by the people who were present at the meeting, but Mr. Teagle told you it wasn't final until he could get some approval? A. That is right. I might like to say in that connection, Mr. Garver, that there had been numerous meetings between Mr. Teagle and myself, prior to this May 8th meeting, that we had been unable to reach any agreement with them.

They originally had insisted upon a house orchestra, house or pit orchestra on each occasion that we employed a traveling name band on stage. That had subsequently been amended to fifty per cent of the times in which we hired a traveling name band on the stage.

Mr. Rappaport pointed out to them that—

Q. Just a moment. Do I understand that there was some shift in the nature of Mr. Teagle's requests during these various meetings you were having from time to time? A. That is right.

Q. And initially it was that you actually have a local band in the pit every time you had a traveling band? A. That is right.

(161) Q. And then that changed. Tell us how it changed. A. It changed until his request was that we have a house or pit orchestra from the local union fifty per cent of the times, in which we would employ a traveling or name band.

Q. So, therefore, every other time; is that it? A. Every other time, or fifty per cent over any given period, such as a calendar year, I should think.

Q. There has been received in this record, Mr. Gamble, G. C. No. 14, a letter addressed to you. I take it you received that? A. Yes, sir.

Q. There is reference on there to some executive meeting of the local that was to take place, at which you were privileged, according to the language, to appear. A. I did not appear.

Q. Were you having discussions with Mr. Teagle prior to receiving this letter? A. Yes, sir.

Q. And I take it your discussions with Mr. Teagle and his various positions continued from that time on

through at least the May 8th meeting? A. That is right.

Q. Was there any further position that Mr. Teagle ever took? Anything else that he wanted, or any other arrangement that he had in mind? (162) A. At the time he first suggested that 50 per cent of the shows use a pit orchestra, it was thought that we might be able to assemble shows. This was in connection with their saying they had certain jurisdictional rights, but it was thought that the theatre might be able to assemble the show.

Q. When you say "it was thought" who was making this proposal? A. Specifically, the union, but we were willing to try such a—

Q. You discussed that? A. We discussed the merits of it.

Q. Well, I have interrupted you, perhaps improperly. Tell us what the thought was? A. The thought was that we could perhaps assemble certain shows or purchase shows already assembled which would then require the services—they would have no musical personnel, instrumental or orchestral personnel traveling with them when they played an engagement at any given point; that they would require the services of, for example, a local band.

We investigated the possibility of that through the Edward Sherman Agency, and through Mr. Charles Hogan, who is our booking agent in Chicago, and they were unwilling to make us any guarantee that they might be able to supply 50 per cent of our shows to us on that basis.

Q. Let's see if I understand you: The proposal was—and (163) you stop me if I am wrong—that for 50 per cent of the number of times that you would have traveling bands, that you would then go out and arrange shows consisting of vaudeville acts, et cetera, which would be supported by the local band, and that you would have as many of that kind of setups, vaudeville acts and local band, which would equal 50 per cent of the performances at which you had had traveling bands?

Am I stating the situation? You straighten it out. A. Not 50 per cent of the number of times that we had traveling bands, but for each traveling band we employed with a local orchestra, that we would employ an assembled

unit, or a show which would require the services—it was one for one, Mr. Garver.

Q. I understand you now. In other words, for each time you had a traveling band, but not using a local band, you would then, during the period, go out and arrange an assembled show of vaudeville acts, and the local band? A. That is right.

Q. So that in effect, the local band would have an opportunity to perform as often as you had had a traveling band? A. That is right.

Q. Did you communicate your findings as to whether you could—whether it would be possible to arrange such shows? A. Yes, sir. I met with Mr. Teagle, explained to him, and on this occasion, I believe again Mr. Light was present—(164) explained to them that it was impossible for us to get such guarantees or commitments from the source of our talent, from the Edward Sherman Agency, or the Charles E. Hogan Agency; that we would, however, with their permission, start off on such a program with the avowed intention of supplying a creditable portion—50 per cent of it was possible—of the shows to employ local musicians, but that we could not give any such guarantee as to that.

We stated that we would be right back to where we were in the beginning, of employing musicians we were not needing, when there was no service for them to render, nothing to perform.

Q. In other words, you were willing to try, from time to time, to have some kind of show which would utilize a local band? A. That is right.

Mr. Kriger: Objection. I would like the witness to testify instead of Mr. Garver.

Trial Examiner Spencer: The objection is sustained. Strike the answer.

Q. (By Mr. Garver) After you told Mr. Teagle that you were unable to have any assurance that you would be able to assemble such shows, was he willing to let you go ahead and bring in name bands and traveling bands? A. If so, he did not state it to me.

(165) Q. Did Mr. Teagle ever change his position beyond what you have already indicated his positions consistently were? A. The last time I talked to Mr. Teagle, which was in both December and January just past, his position remains the same.

— Trial Examiner Spencer: May I just ask you, did he reiterate his position? You said "remained the same." Did he reiterate it or infer it, or just how are you able to testify that it remained the same?

The Witness: May I speak off the record for a moment, sir?

Mr. Garver: No. Speak on the record. May I pursue a line of questioning which I believe will clarify that?

Trial Examiner Spencer: Very well.

Q. (By Mr. Garver) After the May 8th meeting, you had counsel representing you, and you were trying to come to some understanding with the union; is that right? A. Specifically, Mr. Garver, the May 8th meeting had been arranged, due to our inability prior to that date to reach any agreement with Mr. Teagle and his local.

We had concluded that we would prepare a complaint to be filed with the National Labor Relations Board, citing them for what we considered to be an unfair labor practice.

We notified them of our intent, and requested that we have a final meeting in an effort to get together with them, (166) before going ahead with our complaint, and at the time Mr. Teagle notified me, it was by letter, to the effect that they had referred the matter to the International. Mr. Rappaport had advised them by letter that it seemed an unnecessary and undue delay, and that we were going ahead with our complaint, and complaint was filed.

Q. You indicated that the agreement of May 8th was reached and that it was subject to approval by the union. Did Mr. Teagle ever indicate to you that that agreement was acceptable? Or did he ever indicate to you what disposition had been by the union of that agreement? A. The first part of your question. I do not recall his ever indicating to me that the agreement was acceptable to him, but I did talk to him by phone and he advised me that the



board had taken no action on the matter, that they had referred it to the International.

Q. Well, after that May 8th meeting, did you ever try again to book a traveling band? A. Yes, sir.

Q. And what band was that? A. In August, we booked the Roy Acuff show.

Q. And when was the Roy Acuff show to come in? A. In August, 1949.

Q. And did you arrange a contract for that show? A. Yes, sir.

(147) Q. And Roy Acuff, is that the name of a band? A. It is a hillbilly band. They are quite a well known band, a hillbilly type of show.

Trial Examiner Spencer: Very well known in Tennessee.

The Witness: And West Virginia.

Q. (By Mr. Garver) Did that band show up as it was scheduled and contracted for? A. The reason for our booking—

Q. Now, just answer my question. Did that show up? A. No, sir.

Q. In the normal course of your business, were you notified as to whether or not they were going to show up? A. Yes, sir.

Q. And who notified you? A. Mr. Charles Hogan.

Q. And who is Mr. Hogan? A. He is our agent at Chicago.

Q. What did Mr. Charles Hogan notify you?

Mr. Kriger: Objection.

Trial Examiner Spencer: Overruled.

Q. (By Mr. Garver) What happened? What did he tell you? A. He told me by phone that the show would not be allowed to appear, and sent me a copy of a letter from Mr. James Petrillo, to the effect that the show would not be allowed to appear at the Palace Theatre.

(148) Q. You say Mr. Hogan, your agent in Chicago, sent you a copy of a letter which he received from Mr. Petrillo, according to him? A. That is right.



Q. I hand you what has been marked for identification as G. C. No. 22, and ask you if you can identify that as a copy of the letter which your agent sent you at that time, and referred to in your testimony? A. Yes, sir; I can so identify it.

Mr. Garver: I now offer in evidence G. C. No. 22.

Trial Examiner Spencer: Any objection?

Mr. Kriger: Objection.

Trial Examiner Spencer: What is your objection?

Mr. Kriger: First, it is hearsay. Secondly, there has been no showing of any connection between Mr. Charles E. Hogan and the respondents.

Trial Examiner Spencer: Well, do you have a question as to the authenticity of the letter, Mr. Kriger?

Mr. Kriger: I assume that that will be cleared up by a telephone call one way or the other.

Trial Examiner Spencer: I will just reserve ruling on it at the moment, until you have an opportunity to get a response to your telephone call.

Mr. Kriger: Very well. Off the record?

Trial Examiner Spencer: Off the record.

(169) (Discussion off the record.)

Trial Examiner Spencer: On the record.

Q. (By Mr. Garver) Did you have occasion to refer to the Roy Acuff show in any conversation with Mr. Teagle at about the time when that show was scheduled? A. Yes, sir.

Q. Just how did that come about? A. I personally filed a copy of the contract with the union.

Q. In other words, you went to Mr. Teagle and told him what? A. I went to Mr. Teagle in his office and handed him a copy of the contract, and told him this was a show being booked in, and told him I would like to file a contract if it was proper for me to do so.

Q. This of course was before the show was scheduled? A. That is right.

Q. Do you know how long before? A. Several weeks. I wouldn't try to pinpoint it.

Q. Now, how long was it after you had notified Mr. Teagle of the fact that that show was to come in, that your booking agent, Mr. Hogan— A. Yes, sir.

Q. How long was it after your conversation with Mr. Teagle that Mr. Hogan notified you that the show was not coming in? A. It was no more than just two or three days later.

Q. Now, after the Roy Acuff show didn't show, and particularly (170) some time in about November of last year, did you have any plan or make any effort to bring in some other stage show? A. The type of show that I had discussed with Mr. Teagle—that is, the type of show that would require the services of a local orchestra, for a good many years that show has been difficult to acquire.

There was no demand for it, apparently, which would support it in an open and competitive market.

Q. I don't like to interrupt you myself, but I know if I don't, Mr. Kriger is going to object, and then I will have to sort of agree with him, so I will just anticipate that.

Just answer this question: Did you have in mind plans for any further show in the latter part of last year, after the Roy Acuff show? A. Yes, sir.

Q. What show was it? A. It was an RKO Vaudeville Unit.

Q. And where was that show at that time? A. The show was to appear Christmas Day at the Palace Theatre in Youngstown, Ohio.

Q. And did you discuss with Mr. Teagle your idea, or did you make some plans?

You knew, of course, that that show was on in Youngstown; is that right? A. I knew that it was to be on.

(171) Q. And had you any information as to whether it would be available to you? A. The Palace Theatre in Youngstown is a comparable situation to the Palace Theatre here. It was available to them, and it was logical to assume that it would also be available to us.

Q. Did you notify Mr. Teagle in any way that you had some plans to bring in such a show? A. Yes, sir.

Q. What conversation did you have with Mr. Teagle about that show? A. In substance, to the effect that such

units were available. We had had no experience with them, but we were perfectly willing to try them. It would fulfill his demand to give the local musicians work, something to do, that if they would untie our hands insofar as any guarantees were concerned, that we would be perfectly willing to try one.

He was unwilling to try to untie my hands as far as any extended period was concerned, but did agree that I could bring in a show. I pointed out to him that he had already made me a better offer than that, that I could bring in a show for a show; that at least if I started off with this one, I should be allowed to bring in two, both this one from Youngstown and then a traveling name band. They agreed to that.

Q. You mean they had previously discussed that? Is that (172) what you mean? A. They agreed to my request, that I be allowed to bring in two shows, one for one, rather than just bring in the one show from Youngstown.

Q. Well, this Youngstown show was a show that could possibly utilize a local band; is that it? A. It would require the services of a band.

Q. That was something a little different than what was going on? A. Yes, sir; entirely different.

Q. Give us a little background as to what type of show that was in Youngstown. A. About a year ago, maybe some short time prior to that, the Radio Keith Orpheum people reinaugurated a program at the Palace Theatre in New York City, of 8 acts of vaudeville, supplemented by a motion picture. That was a weekly policy.

There would be a new show each seven days at the Palace Theatre in New York City. Once a month, they would take those eight acts, or some combination of those acts, and put it on the road as a traveling unit, to play in their own theatres throughout the middle west and the east and northeast.

Subsequently, as is evidenced by their accepting this engagement at the Palace Theatre in Youngstown—which is not an RKO Theatre—subsequently those units became available (173) to independent theatres.

Q. Those are vaudeville units? A. Variety acts, vaudeville units.

Q. Now, let's see if I can follow through on this discussion you had with Mr. Teagle. You wanted to bring in that Youngstown show which would utilize a local band?

A. That is right.

Q. And you also wanted him to agree that if you did, you would be able to subsequently bring in a traveling band without any further obligation? A. That is right.

Q. Was this agreeable to him? Or what did he want?

A. It wasn't the first time I had made that request of Mr. Teagle, and up to this time we had not been able to agree. But in view of conditions which I assume he felt were favorable, he indicated to me that with approval of the Board—he felt that the Board would give its approval—

Q. You mean the Executive Board of the union? A. The Executive Board of the union, that it would be agreeable and he would let me know in some short—one or two or three days.

Q. Now, did you ever bring in that Youngstown show? A. We did not.

Q. What was the reason you didn't bring in the Youngstown show? (174) A. I submitted the proposal to my New York Office. They pointed out to me that we had no experience with this type of show; we did not know what it would do; that one show would prove nothing; that we would be right back then to where we had been for two years with the union; that in view of the immediacy of our hearing before the Labor Board, that it should perhaps be best to let the case just rest and be heard by the Labor Board.

Q. What was this guarantee that came up in your discussions? The union wanted you to guarantee something? A. The union wanted a guaranteed week's work for musicians, whether we can use them or not, for each week that we will play a traveling stage band on the stage of the Palace Theatre.



Trial Examiner Spencer: Do you want a recess now?

Mr. Garver: I have a little bit more, and then I am through with this witness.

Q. (By Mr. Garver) I hand you General Counsel's Exhibit No. 5, which, as shown by this record, various groups of nine men were paid for periods of four days. Did you hear the testimony this morning of Mr. Houser that that would consist of four days, three times a day; therefore, as if there had been 12 shows? A. Yes, sir.

Q. Now, as a matter of fact, bands like the Prima band, and the Dorsey band, when they are utilized in the theatre, (175) about how many shows do they play during the week? A. It was the policy of the theatre to play either 14 or 16 shows, depending upon the drawing power of the attraction. In all the records that I have examined of the theatre, those shows that played there under my management and immediately thereto, and going back for some years, as our records do, I do not find any shows that played less than 14 shows at the Palace Theatre.

Q. During a week? A. During a week, during a four-day engagement. No., naturally, if they played a three-day engagement, it would be reduced by either three or four.

Mr. Garver: Mr. Examiner, just so the record is clear, I don't think it necessary to pursue a line of examination on this point; it is my contention that since the stage shows which played, as this witness has testified, during these various weeks, for 14 or 16 shows, that wherever on G. C. No. 5 payment was made to the local musicians only for 12 shows flatly, that meant that they did not play in connection with the bands during any of those periods.

Trial Examiner Spencer: I think that is in the testimony.

Q. (By Mr. Garver) Is the Palace Theatre willing to employ local musicians when it has any actual work for them?



Mr. Kriger: I object to that.

Mr. Garver: I want to reframe the question.

(176) Q. (By Mr. Garver) Have you ever indicated or communicated to the union, whether the Palace Theatre is willing to use local musicians when it has actual opportunity to utilize them in connection with the show? A. Yes, sir; it is there in black and white, second paragraph.

Q. Second paragraph of G. C. No. 17. All right.

As a matter of fact, do you know whether local musicians have been utilized at the Palace Theatre within recent years for any particular performances? A. In 1947 just a month prior to our taking over the operation of the theatre, we were dickering for the theatre at that time, they played a local show and used local musicians.

Q. What kind of local show was it? A. It is known as the Adell Ott Larhmer show. Adell Ott Larhmer operates a local dance studio and once a year she gives a recital, and prior to the war and for the first time after the war, in 1947, that show did play the Palace Theatre and used a local orchestra.

Q. In other words, that was local talent? A. On stage, and local talent in the orchestra.

Q. How many days was that? A. That was for three days, three shows each day.

Q. As a matter of fact, on G. C. No. 5, would that be reflected on there? (177) A. It is marked here "Larhmer," that is the Larhmer show.

Q. Oh, the last item of G. C. No. 5, on the back of the page, the Larhmer show; is that the one you are testifying about? A. Yes, sir.

Q. And as a matter of fact, that shows three as the number of days? A. That is right.

Mr. Garver: So I guess we will have to say that G. C. No. 5 does show an instance where the local band was being used.

Trial Examiner Spencer: Yes, I believe that will have to be amended.

Take a short recess.

(Short recess.)

Trial Examiner Spencer: On the record.

Mr. Garver: Mr. Examiner, during the recess we have completed a telephone call, and I am now reciting what Mr. Kriger and I understand about it, that a check of the records of the American Federation of Musicians in New York City shows that they do have their own copy of the letter sent by Mr. Petrillo to Charles Hogan, which has been already received into evidence, hasn't it?

Trial Examiner Spencer: I think I reserved the ruling on that.

Mr. Garver: Oh, yes. And the parties, of course, having (178) made that check, are now agreeable to stipulate that such a letter was sent by Mr. Petrillo to Mr. Hogan, and as indicated on the copy which has been submitted here today.

Trial Examiner Spencer: Is it so stipulated, Mr. Kriger?

Mr. Kriger: Yes, without waiving any other objections.

Trial Examiner Spencer: Your objection to the admission of the exhibit is now overruled, and it is received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 22 for identification was received in evidence.)

Mr. Garver: We have a subsidiary problem with respect to the telegram, a copy of which was marked for identification yesterday, that being the telegram in 1947, likewise from Mr. James C. Petrillo to the General Artists Corporation?

The Witness: That is right.

Mr. Garver: And apparently, at least insofar as we have been able to ascertain by telephone, copies of that are not available in the office of the American Federation of Musicians, so that we have been considering how to dispose of that. Of course, it is implicit in the fact that we have a copy.

Trial Examiner Spencer: What exhibit was that identified as?

Mr. Garver: I am now speaking about No. 13, so marked for identification, being a copy of what purports to be a (179) telegram of November 18, 1947, from Petrillo to the General Artists Corporation, in connection with the Ray Eberly show.

The parties are yet unable to arrive at a way of handling that. Mr. Kriger has suggested that the record be left open.

Mr. Kriger, before we get into too extravagant an arrangement, I wonder if you could check with Mr. Teagle as to his copy of such a wire in the local office?

Mr. Kriger: We know of nothing about that wire. It doesn't appear in our records. Otherwise I would agree that it existed.

We know nothing about it, and I would suggest that the party who furnished this copy no doubt has the original in its possession, in which case I would be able to have more adequate proof of its existence, and I would be pleased to stipulate the existence of such telegram.

Mr. Garver: I would just think out loud, to suggest that I will again offer the document, and then perhaps ruling on it being received can be reserved until such time as I have had an opportunity to supply, perhaps a letter from Mr. Kriger and myself that we have checked the original, or perhaps proper affidavits or other material which would warrant its being received.

Trial Examiner Spencer: Well, are you carrying on a conversation there that you don't want on the record?

In order that there be no indefiniteness about this, I (180) will reserve ruling for a period not to exceed 15 days from the close of this hearing. If, at the expiration of 15 days, I have had nothing from the parties in the way of a stipulation, the exhibit is refused.

If within the 15 days I have had a stipulation on the exhibit, stating that it is authentic, then I will receive the exhibit without any further order. Is that clear to all parties?

Mr. Garver: Yes, it is very clear to me, Mr. Examiner. I wonder further if it might not be well if the document

which is being talked about was taken into the record, together with the reservation that it is not received?

Trial Examiner Spencer: It may be attached to the exhibit file, and in the event I do not receive a stipulation, then it will be considered a rejected exhibit.

We frequently have rejected exhibits in the rejected exhibit file.

Mr. Garver: Well, I wasn't thinking that it necessarily be in a separate file; it seems to me the position of the parties are sufficient as if it were submitted subject to a motion to strike.

Q Trial Examiner Spencer: I do not care to receive it that way. I have stated how I will take it into the record, and that is that.

Now, let's proceed with something else.

(181) Mr. Garver: That is all I have of this witness.

Trial Examiner Spencer: Do you have any questions for the company?

Mr. Rappaport: Not at this time.

#### CROSS EXAMINATION.

Q. (By Mr. Kriger) Mr. Gamble, you are the manager of the Palace Theatre? A. Managing Director. I have a manager there in addition to myself, who works under my supervision.

Q And what are your duties? A. As I have stated, my duties are to generally oversee the operation of the theatre, supervise the employees, to make recommendations as far as booking films and stage attractions are concerned; to represent my company in various negotiations, such as I have carried on with Mr. Teagle; to plan promotional and advertising campaigns; to generally look after the welfare of the theatre in the community.

Q. In other words, you operate the movie house? A. That is right, sir.

Q. You are the boss? A. Under the direction of my New York Office.

Q. Under its direction. And to what extent does your New York Office limit your power to act? A. That would depend upon the situation, sir.

Q. Well, would you state specifically, in what fields you (182) are permitted to act yourself, and what fields you are limited by your New York Office?

Mr. Garver: I object to that question as being too broad.

Trial Examiner Spencer: Is the question put to you in a manner that you can answer it clearly, Mr. Gamble?

The Witness: I don't believe so, sir.

Trial Examiner Spencer: Well, narrow it down a bit. We ought to be getting at something specifically.

Q. (By Mr. Kriger) Relative to labor relations, are you in a position to make commitments in dealings with the musicians' union? A. It is my responsibility in connection with labor to negotiate a settlement and send it to my office for their approval.

Q. Then you are in no position to make commitments? A. There again it would depend upon the situation, sir. I believe if my recommendations were reasonable, that they would go along with it. I am not restricted specifically in that respect.

Q. Well, isn't it a fact, Mr. Gamble, that you and Mr. Teagle reached an agreement in December of 1949 relative to the employment of union musicians on one engagement, and that you subsequently were overruled by your New York Office? A. It was definitely understood at that time that Mr. Teagle's actions were subject to the approval of the Board, (183) and that my actions would be subject to the approval of my New York Office. That was understood and repeated several times in our conversation, and we left the meeting that day with the understanding that we were to get in touch with one another subsequently.

Q. Isn't it a fact, Mr. Gamble, that you had expressed yourself at that meeting as being in favor of proposition, personally?

Mr. Garver: The record isn't clear as to what proposition or meeting we are talking about.

Trial Examiner Spencer: You are referring to this memoranda that has been received?



Mr. Kriger: No, the proposal to employ the RKO Vaudeville Unit in December of 1949.

Mr. Garver: From Youngstown?

Mr. Kriger: From Youngstown, yes.

Q. (By Mr. Kriger) Now, isn't it a fact, Mr. Gamble, that on that occasion you had expressed yourself as favoring the proposition personally? A. I did favor it, Mr. Kriger, with the exception that I have noted.

Q. With the exception that you were subject to being overruled by your New York Office? A. That is right, sir.

Q. On the selection of the movies that are shown here, you (184) make the decision, do you not? A. I do not make the decisions, sir; I have the same limitations there that I would have in connection with the agreement that you just referred to.

Q. You make recommendations? A. I recommend. In a great many instances they are accepted, and are instances in which I am overruled. They may have more information about a picture than what I have, as to what its potential gross would be, its merits as far as entertainment is concerned. They might have in mind a better place for it.

That would be true of a traveling name band that I might want to bring in, and they want to bring in. I have turned certain bands down because I had information locally that they would not make a best attraction, so to speak.

Q. Now, you made the decision to employ the RKO Units, did you not? A. No, sir, we have never approached RKO in connection with that, and that was made clear to Mr. Teagle in all my conversations with him, that if he would untie my hands, I would go to New York and start negotiations with these people as to the availability of these shows for the Palace Theatre in Akron.

Q. Wasn't it a fact, Mr. Gamble, that you approached Mr. Teagle and told him you could get the RKO? (185) A. I told him I had a reason to believe I could get the RKO Units. I told Mr. Light and Mr. Teagle specifically that I was willing to go to New York and start negotiations for

such shows, and it was reasonable to believe that we could get them.

Q. In fact, you were anxious to get those shows, weren't you? A. I am still anxious to get those shows, sir.

Q. And when you were given an answer, given a chance to get them, you rejected it, didn't you? A. I have never had a chance to get them. I was offered one show, and it is not sufficient for experience. One show would prove nothing.

Q. Well, you rejected the chance to show the one show? A. I was disappointed that day when I walked out of the office with the tentative—

Q. And there were no strings attached to that? A. Yes, sir.

Q. What were the strings? A. That we would be allowed to play only one other show without further interference on the part of the union.

Q. Do you mean to say that the union told you that? A. The union had previously interfered, and on this particular occasion they only gave me permission to play two shows.

(186) Now, having previously interfered for two years, wouldn't you have left the office feeling that they were going to interfere after those two shows?

Mr. Kriger: I ask the witness' answer be stricken.

Mr. Garver: It is responsive. As the saying goes, you were fishing and threw your bait out, and got yourself a fish.

Mr. Kriger: He has asked me a question, and I ask it be stricken.

Trial Examiner Spencer: Well, in a sense you got an answer to your question. I could strike a part of it, because part of it was not responsive, but I will overrule you. Proceed.

Q. (By Mr. Kriger) Now, Mr. Gamble, isn't it a fact that the contract proposed was a two-month agreement? A. There was a two-month limitation on it. We were to play the two shows within a two-month period.

Q. And you were given a two-month agreement, were you not? A. We were not given anything. When I left there that day, it was tentatively understood that if this arrangement could be worked out, that these two shows would play within a two-month period.

Mr. Kriger: Please mark this.

(Thereupon, the above-referred to document was marked Respondent's Exhibit 1 for identification.)

(187) Q. (By Mr. Kriger) Would you read this over, Mr. Gamble? Perhaps you are familiar with it. A. I have never seen this document.

Q. Would you read it over?

Mr. Garver: Have you got a copy?

Mr. Kriger: Yes. Here is the only other copy I have.

A. I have read it, sir.

Q. I ask you, Mr. Gamble, whether or not that expresses the understanding that was reached between you and Mr. Teagle at a meeting in the latter part of December, 1949, at Akron, subject, of course, as you have stated, to acceptance or rejection by your superiors in New York?

Mr. Garver: Just a minute. This is highly objectionable. I will even ask that the document be taken away from the witness.

The question about whether or not some prepared document properly reflects an understanding reached is something that I might have an opinion about; the Examiner might have an opinion about it, and so on.

Unless this document is being offered to establish the witness' knowledge of it, and having seen it before, or what the document is, there is no point in giving it to him.

Mr. Kriger: I will develop that.

Mr. Garver: The Examiner is going to write the last analysis of what the document is. Not some witness' conclusion. (188) Certainly the last question is objectionable.

Trial Examiner Spencer: Do you want to be heard?

Mr. Kriger: I would, yes. As I recall, there was some testimony on this meeting in the latter part of December,

when the witness stated specifically what his understanding was, and what happened.

I was present at that meeting, and the matters which were discussed were reduced to writing. I am asking Mr. Gamble whether or not that was the understanding reached.

Mr. Garver: Well, Mr. Kriger, what is this supposed to be? Is this a document seen by the witness before?

Mr. Kriger: No, the document was not in existence. I don't think that is pertinent. I am not offering the document at this time.

Mr. Garver: Well, I am not going to undertake to educate counsel; certainly I don't think I need that burden.

This document certainly is not admissible at this point. I want to make clear on the record, that I don't want to be burdened with any propositions as to whether or not this document correctly reflects that situation. I might look it over and after studying it say maybe it does, but that isn't the point. This document is not proper for testimony by this witness.

Mr. Kriger: I surely have a right to offer a document, either by my own testimony, by my client's testimony, or by the (189) testimony of an adverse witness in the court.

Trial Examiner Spencer: As I understand it, you are not seeking to have this witness identify this document?

Mr. Kriger: No, it wasn't in existence at that time.

Trial Examiner Spencer: You are asking him, however, if this document incorporates an agreement reached on a certain date?

Mr. Kriger: Whether the language adequately expresses what they agreed on.

Trial Examiner Spencer: I will take your answer.

The Witness: May I answer, sir?

Trial Examiner Spencer: Yes, sir.

A. Not entirely.

Q. Well, would you state in what ways it does not?

Trial Examiner Spencer: Now, wait. I can see how this examination can be drawn out greatly by a document



which you are not identifying, which presumably you don't intend to offer, and I don't think we will get anywhere by carrying on a long examination relative to this document. I have permitted your question, and he says it does not represent it in all respects.

Mr. Garver: As a matter of fact, Mr. Examiner, I don't think it is necessary to add to argument to support the objection.

Trial Examiner Spencer: Well, it isn't, because I am (190) not going to permit a continued examination of this witness on this document.

If you get the document identified later, such questions might be permissible, but I don't think they are now.

Mr. Kriger: Well, the document hasn't been offered yet, but I want to examine on the substance of the document.

Trial Examiner Spencer: You can examine the witness as to what occurred at the conference.

Q. (By Mr. Kriger) Now, who was present at this conference, Mr. Gamble? A. Myself, Mr. Lou Belkin, Mr. Teagle and yourself.

Q. And who is Mr. Belkin? A. Mr. Belkin is on a retainer by the Engineers Local, members of which local we employ at the Palace Theatre here in Akron.

Q. And the meeting was arranged at your request, was it not? A. That is right, sir.

Q. And you had asked Mr. Rogers, who is the business representative of the Engineers Local, to arrange such a meeting? A. I had not, sir; I arranged such a meeting myself.

Q. With who? A. With Mr. Teagle.

Q. Were you familiar with the fact, or were you aware of the (191) fact that Mr. Belkin had called me? A. Yes, sir.

Q. And arranged for the meeting? A. Yes, sir.

Q. And were you aware of the fact that Mr. Belkin had called me at the instance of Mr. Rogers? A. That I was not, sir.



Q Well, had you called Mr. Rogers? A. That I had not.

Q Had you called Mr. Belkin? A. Yes, sir.

Q And on that occasion, you had indicated to Mr. Belkin, had you not, that you could get the RKO shows, and you wanted a meeting with Mr. Teagle to work out some sort of an understanding? A. No, sir, Mr. Kriger. I had never known that I could get the RKO shows. I have never tried to get the RKO shows, but I have stood willing ever since those shows have been in existence, for some years or more, now, to attempt to get them, and there is good reason to believe that I could get them, but I don't know that I could and I never actually tried. I have made that clear in all of my dealings with Mr. Teagle.

Q Now, Mr. Gamble, you proceeded through Mr. Belkin to arrange this meeting? A. That is right.

(192) Q Something must have occurred whereby you would call another lawyer, representing another labor organization. A. You did not ask me what had occurred.

Q Well, what had occurred? What had occurred why you had to deal through an intermediary to have a meeting with Mr. Teagle, whose office is next door to you? A. Mr. Rogers is a friend of mine; he is the business agent of the engineers local. Mr. Belkin is on retainer for that local. I met Mr. Belkin on several occasions previously, and I had discussed this case with Mr. Rogers.

He was aware of the fact that we were having certain difficulties operating the theatre there in the manner in which we wanted to operate it, and he suggested that perhaps Mr. Belkin, who he considered very capable, could act as intermediary, and it was he who suggested that I contact Mr. Belkin. Now, Mr. Rogers may have; I have no knowledge of that.

I contacted Mr. Belkin, and as you say, he called you, and perhaps called Mr. Teagle and arranged this meeting. As I recall it, that is the record.

Q Now, at that meeting, I will ask you whether or not an understanding was reached? A. Subject to the conditions that I just recited to you.

Q. Subject to you being overruled by your superiors in New York? A. And subject to the Executive Board of the Union approving (193) it on Mr. Teagle's part.

Q. And the understanding was as follows: That there would be two engagements during the months of January and February? Do you recall that? A. Yes, sir.

Q. And that at the first engagements, you would employ a band or orchestra of nine members of Akron's Musicians' Local 24? A. That is right.

Q. And that the second engagement would be held only if you wanted to hold it? A. That is right.

Q. And that on the second one, it would not be necessary for you to employ members of the Akron Musicians Local? A. That is right, but may I qualify my answer to the first question—the preceding question?

Q. Yes. A. The second show was not to be held just at my discretion; it was a specific request upon my part that I be allowed to hold such show if I wanted to.

Q. And Mr. Teagle told you that he didn't care if you wanted to hold the show or not? A. At first he wouldn't accede to my request that I be allowed that second show, and then he did, subsequently, in the discussion or negotiation.

(194) Q. And the understanding was that you could hold a show if you wanted? A. And the understanding was that I could if I wanted to.

Q. And that the employment of the local musicians would be at the established local scale for your theatre? A. No, sir. That specifically was left open to further negotiations.

Q. That wasn't closed? A. Such shows would be held if we could negotiate a satisfactory agreement with them as to wages and conditions.

Q. You had never negotiated? A. That we had never negotiated with the union.

Q. On wages and conditions? A. On wages and conditions.

Q. And it was further agreed, was it not, subject to the qualifications which you stated, that the first of the

engagements would be held prior to March 1st, 1950? In other words, during the month of February? A. I believe if you read that, you will see that it is January, the 1st of the engagements. The second one was to be held before March 1st, 1950.

Q. That is right. In other words, both of them should be held— A. Within the 60-day period.

Q. That is right. And that this agreement, that the agreement (195) would expire on March 1, 1950? A. Specifically, there was no mention of an agreement. It was that by March 1, 1950, both shows would have played, and then we would get together and determine what course of action we would pursue from there. Specifically, there was no mention of an agreement in a sense of a contract.

Q. Your understanding was, was it not, that within a short period of time—I believe it was one week after the first— A. There was no restriction put in that. It was understood that we would get together after March 1st, but there was no restriction put on it, Mr. Kriger.

Q. After March 1st, you did understand that you were to get together with Mr. Teagle? A. That is right.

Q. And the union? A. That is right.

Q. And you were to negotiate a new collective bargaining agreement?

Mr. Garver: I object to his throwing in the words "collective bargaining agreement."

A. That is not so.

Q. Well, what is your understanding?

Trial Examiner Spencer: Wait a minute. There has been an objection. What was your understanding about what?

Q. (By Mr. Kriger) What was your understanding about what (196) you were to do after March 1st? A. After March 1st, that we were to continue negotiations with the union, and based upon what experience we had had, perhaps we could better define the direction in which we could go.

Q. Well, tell me this, Mr. Gamble: What did you intend to negotiate? What was to be the end result of your negotiation with the union? A. The end result, Mr. Kriger, was to be that we would not employ musicians unless we had actual work and services needed for the operation of the theatre. We would not be compelled to employ them unless we needed them.

Q. Mr. Gamble, didn't you ever conceive of negotiating with this union on wages and conditions of employment? A. Mr. Kriger, that would have been the second step in our negotiations with the union. We were never successful in overcoming our first step, which was that we should not be compelled to employ musicians until we needed them. We were to employ them whether we needed them or not.

Q. Now, Mr. Gamble, will you answer my question? A. I just answered your question, sir.

Q. Did you ever conceive of bargaining with this union on wages and working conditions for its members? A. Yes, sir; I did.

Mr. Garver: Just a minute. The question has been answered.

(197) Mr. Kriger: He didn't.

Mr. Garver: I thought he did.

Mr. Kriger: No, he gave me an argument.

Trial Examiner Spencer: The question is, did he ever conceive of such a thing? Well, let him answer it.

Did you ever conceive of such a thing?

The Witness: Yes, sir; on the day on which this document refers.

Q. (By Mr. Kriger) And when did you intend to bargain with the union on wages and working conditions of its members?

Mr. Garver: Objection. We are not going anywhere as to what took place in the events here, by that line of inquiry.

Trial Examiner Spencer: Well, is that a question that you can answer as to what you intended with respect to bargaining?

The Witness: Yes, sir.

Trial Examiner Spencer: Can you answer that?

The Witness: Yes, sir.

Trial Examiner Spencer: Answer it.

A. We intended to bargain with them on wages and working conditions when it was understood that we would not employ them unless we had something for them to do, unless they were needed.

Q. In other words, you at no time would ever bargain with the union on wages and working conditions unless the union (198) yielded to you on your proposition as to when you might want their services?

Mr. Garver: Don't answer that. Let me hear that question. I know it is objectionable.

(The reporter read the question.)

Mr. Garver: That utterly is an effort to characterize and construe the testimony, and I would summarize it in wholly different fashion. The testimony of this witness was that they couldn't do anything until the union would let them go ahead and put on these traveling bands and operate their shows free of being obliged to use the musicians when they didn't need them. That is the testimony.

Trial Examiner Spencer: In other words, you object? Sustained.

Mr. Garver: I certainly do.

Trial Examiner Spencer: Sustained.

Q. (By Mr. Kriger) Well, did you ever bargain with the union?

Mr. Garver: Objection as irrelevant.

Trial Examiner Spencer: Read the question.

(Question read by the reporter.)

Mr. Kriger: I didn't finish the question, yet.

Trial Examiner Spencer: Let him finish.

Q. (By Mr. Kriger) Did you ever bargain with the union on wages and working conditions? (199) A. Yes, sir.

Q. When? A. On numerous occasions.



Q. Would you state the first of your occasions? A. We specifically discussed—I figure that bargaining is discussing, the pros and cons and merits, and so forth. Is that your understanding?

Q. That is right. A. That is mine, sir. On May 8, 1949, we discussed wages.

Q. Working conditions?

Mr. Garver: Objection. This witness can't characterize. Why not ask him what took place on May 8th? If you want to cross examine, you can do it in any fashion, but just throwing him the idea of working conditions—

Trial Examiner Spencer: You are using terms there that have come to have a sort of legal meaning. Your idea of bargaining on working conditions and the witness' idea of bargaining may be two different matters.

Mr. Kriger: Well, I can reduce it to simple language, but I assume that the manager of the Palace Theatre would understand.

Trial Examiner Spencer: Well, you are using terms that a lawyer may understand one way, and a layman another. So let's keep it clear.

Mr. Garver: I understand why these bits of language are (200) being thrown in. I take it there will be some ultimate contention that these matters are working conditions. As a matter of fact, they are not; they are the right not to work and get paid.

Mr. Kriger: I ask that that remark be stricken.

Trial Examiner Spencer: That may be stricken.

Q. (By Mr. Kriger) Now, to get back, Mr. Gamble, to your position, and your responsibilities as manager of this theatre, you had mentioned that except for labor relations and except for booking of movies and theatrical engagements, wherein you are subject to being overruled by your New York Office, that you are in charge of this Theatre; is that correct? A. There would be other things than those two items you have mentioned.

Q. Is there anything else in which your authority is limited? A. There could be a great many things, Mr. Kriger.

Mr. Garver: I object to that. I don't see how this record is aided by knowing the limitations put on this man. Maybe he hasn't got the authority to put a neon sign out front. I don't know what difference it makes.

Mr. Kriger: I think it is important as to what his authority is.

Trial Examiner Spencer: He may answer. Read the question.

(The reporter read the question and answer.)

Trial Examiner Spencer: Do you want to add anything to

(201) The Witness: No, sir.

Q. (By Mr. Kriger) You don't want to answer any fields in which your authority is limited? A. I will answer anything specifically that you want to itemize, Mr. Kriger.

Q. You don't want to add anything to the two things I have itemized, labor relations and the booking of movies and theatrical engagements?

Mr. Garver: Mr. Examiner, I don't see any point in compelling the witness—attempting to embarrass the witness by compelling him to think of all the things he can't do as a manager. I will help you: He can't spend \$100,000 a year for nonsense; he can't spend too much time—

Trial Examiner Spencer: Mr. Garver, I don't want to hear a speech. If you want to make an objection, make it. What is your purpose here, Mr. Kriger?

Mr. Kriger: My purpose is the question of commerce is at issue in this case.

Trial Examiner Spencer: The question of commerce?

Mr. Kriger: The question of commerce; that is right. And whether this enterprise is operated essentially as a local enterprise, or as they say, as part of a nationwide organization, I think is at issue, and the scope of the manager's authority, I think, is directly pertinent to that issue.

(202) Trial Examiner Spencer: To the question of commerce. Well, I am very pleased to know what your line of inquiry was on. I see no objection to the witness stating the full scope of his authority, to the extent that you haven't already. You might proceed to do it.

The Witness: I have answered your question. Do you want me to answer it more fully?

Q. (By Mr. Kriger) I just want to ask if you have anything else to add on any fields in which your authority is limited.

Mr. Garver: I object to his asking this question, which wasn't allowed, Mr. Examiner. It isn't a question of whether it is limited; I let him tell you what his authority is, and what he can do. Thinking of all the things he can do, my God.

Trial Examiner Spencer: Well, I am not asking the questions; Mr. Kriger is interrogating the witness at this time, and he may answer if he thinks of some other ways in which his authority is restricted.

Is that what you want?

Mr. Kriger: That is correct; anything he wants to add to the two fields that I have mentioned.

Trial Examiner Spencer: If it occurs to you. If nothing else occurs to you, just say so, and we will proceed to something else.

A. I have said there would be other things. For example, I shouldn't attempt to remodel the theatre, for example, surely, (203) without consulting my New York Office.

I have other theatres in other states which I look after. I surely shouldn't think of going off and leaving the theatre for indefinite periods, even though I were visiting other theatres in the organization, theatres in Indiana, or Pennsylvania or Wisconsin, without first receiving approval for my trip from my New York Office.

I perhaps shouldn't leave Akron and go to New York to book a traveling stage band, for example, without inquiring of my New York Office if it was all right for me to make a trip into New York for the purpose of booking such a show or such a band.

It is more, Mr. Kriger, by mutual consent that we do these things. We have respect for my ability, or I don't think I would be there. I also have respect for their posi-

tions as an agent of the company. I don't think it would behoove me to move about arbitrarily on a great many things.

Q. But there is, Mr. Gamble, a large field in which you operate the Palace Theatre pretty much? As if it were your own business? A. That is not so.

Mr. Garver: That calls for a conclusion.

Trial Examiner Spencer: Do you want to make an objection?

Mr. Garver: I object, and move the answer be stricken?

Trial Examiner Spencer: Overruled; the answer may remain.

(204) The Witness: If counsel desired that I add to his previous question, I should like to add to that answer, if you have no objection.

Q. (By Mr. Kriger) You may, anything else. A. I can think of actually only one thing in which we probably move arbitrarily, and that is the employment of local people.

Q. You do employ local people yourself? A. Your local crew, your local people. What we would term our miscellaneous employees.

I should think that almost every other phase of our business would be directly or indirectly affected by our daily communications and calls and our associations with our New York Office. I think that is true with every theatre that is operated under a chain theatre plan.

Q. These supplies which you purchase, do you purchase them yourself? A. They are purchased through a central purchasing office.

Mr. Garver: You are speaking of the supplies referred to in the stipulation?

Mr. Kriger: That is right.

Q. (By Mr. Kriger) Do you requisition what you want? A. Yes, sir. We don't always get it.

Q. Now, going back to September of 1947, of course you are familiar with Section 4 of the constitution and

bylaws and policy of the American Federation of Musicians? (205) A. I may or may not be. I was never successful in getting one of those books from Mr. Kriger in the several times I requested one from him. If I can see the section, I will tell you whether I am familiar with it or not.

Q. Section 4, I believe it is.

Mr. Garver: Of Article 18?

Mr. Kriger: That is right.

Mr. Garver: Of the constitution of the National?

Mr. Kriger: That is correct.

Mr. Garver: The same section we have had some testimony about.

Mr. Kriger: That is right.

Trial Examiner Spencer: Have you seen it, Mr. Witness?

The Witness: Yes, sir.

Trial Examiner Spencer: Are you able to answer the question now?

The Witness: I would like to have the question read.

(The reporter read the question.)

The Witness: Do you mean was I familiar with it in September of 1947?

Mr. Kriger: Yes.

A. No, sir; I was not.

Q. You never saw one of these books during your—

Trial Examiner Spencer: Let me see that section, please.

(206) Mr. Garver: Is that the same one in evidence?

Mr. Kriger: It is.

Mr. Garver: It is a different color; maybe it is a different year.

Trial Examiner Spencer: Well, it is very short. Would you mind reading it into the record, so we will have it all clear in the record?

Mr. Garver: Mr. Examiner, I don't know whether you overheard my request at this point. This particular document which Mr. Kriger now has is the constitution



for the year 1948—excuse me, the one he has in his hand is for the year 1949. The one referred to in the record up to this point is for 1948.

It seems to me that it would be helpful if he would also submit for introduction into this record the 1949 constitution.

Trial Examiner Spencer: If he has no objection.

Mr. Kriger: No.

Mr. Garver: I am willing to use it as General Counsel's Exhibit, if you like.

Mr. Kriger: No difference.

Mr. Garver: Will you mark this as General Counsel's Exhibit No. 23?

(Thereupon, the document above-referred to was marked General Counsel's Exhibit No. 23 for identification.)

(207) Mr. Garver: This being what purports to be the constitution, bylaws and policy of the American Federation of Musicians of the United States and Canada, dated 1949, and I am willing to stipulate that that is a true and correct copy of such constitution.

Trial Examiner Spencer: All right, Mr. Kriger?

Mr. Kriger: No objection.

Trial Examiner Spencer: I presume you are offering it?

Mr. Garver: I am offering it.

Trial Examiner Spencer: All right, received.

(The document heretofore marked General Counsel's Exhibit No. 23 for identification was received in evidence.)

Q. (By Mr. Kriger) Now, in September, 1947, did you know that that section was in the constitution and by-laws and policy of the Federation? A. No, sir; I did not. We had, in the two months prior to that, just made three shows, and in the several shows prior, or several months prior, rather, to that, we played four shows in addition in which that was not enforced.

Q. When did you first discover, Mr. Gamble, that Section 4 was part of the policy of the Federation of Musicians? A. I saw Section 4 yesterday for the first time when it was introduced in evidence, but I saw evidences of its working right after September, 1947, when Mr. Teagle came into my (208) office and said if we did not employ a stage band, that the Ray Eberly show would not be able to appear, and it did not appear.

Q. Well, you did know, Mr. Gamble, did you not, that there was such a thing as the constitution of the Federation of Musicians? A. I would assume so, if I had been asked. I had never seen it.

Mr. Garver: I admit that the American Federation of Musicians has such a rule, and that they seek to make every effort to enforce it. I concede that.

Mr. Kriger: That is not the issue.

Mr. Garver: In fact, I will go so far as to say that that is probably what the complaint is based upon.

Mr. Kriger: I move that the remarks of counsel be stricken.

Trial Examiner Spencer: Go ahead. Did you move to have those remarks stricken?

All right, proceed; they are stricken.

Mr. Garver: You are not striking my remarks?

Trial Examiner Spencer: Yes, I strike your remarks, and you may proceed. And I want to instruct you not to keep on volunteering remarks when Mr. Kriger is examining the witness.

If you want to make an objection, I will take that. I don't care to have you volunteer remarks. Proceed.

Q. (By Mr. Kriger) Mr. Gamble, do you want us to believe, then, that in view of your—well, strike that.

(209) You want us to believe, then, that in spite of your lengthy experience as a manager in the entertainment field, in the movie field, dating back to, I believe, 1941, that it was only until yesterday that Section 4 of the constitution of the Federation was ever called to your attention? A. That is the first time I ever saw the section and read it.

Mr. Kriger: Mark this.

(Thereupon, the document above-referred to was marked Respondent's Exhibit No. 2 for identification.)

Q. (By Mr. Kriger). Now, offering you a document which has been labelled for identification Respondent's Exhibit No. 2, I will ask you to state what that document is. A. May I get something from my kit? Some material that I have in my file?

Mr. Garver: I take it, Mr. Examiner, the witness apparently wants to compare this document. There is no controversy as to what it is.

Trial Examiner Spencer: In order that you may answer the question?

The Witness: Yes, sir.

Trial Examiner Spencer: All right.

Mr. Kriger: I have no objection.

Trial Examiner Spencer: Very well; now proceed.

The Witness: May I hear the question?

(210) (The reporter read the question.)

A. It is a form contract between the Edward Sherman Agency and the Akron Palace Theatre Corporation, which was our holding company at the time of June 26, 1947, for the employment of Ray Eberly and his band at the Palace Theatre for a four-day engagement, commencing November 20, 1947.

Q. I will ask you whose signature it bears as representative of the company? A. Leroy J. Furman.

Q. And would you state who Mr. Furman is? A. Mr. Furman is an employee of the Gamble Enterprises, Inc., in the capacity of a buyer and booker of film and stage shows.

Q. In New York? A. In New York City.

Q. And at that time, was he an authorized representative of the company? A. Gamble Enterprises, Inc.

Q. And was he authorized to execute this agreement on behalf of the company? A. After he had submitted the contract for approval.

Q. At that time? A. Yes.

Mr. Kriger: I offer Respondent's Exhibit No. 2, with special reference to the fifth paragraph, which reads as follows:

(211) "It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract."

Trial Examiner Spencer: Is there any objection to the receipt of this document?

Mr. Garver: No objection.

Trial Examiner Spencer: It will be received.

(The document heretofore marked Respondent's Exhibit No. 2 for identification, was received in evidence.)

Trial Examiner Spencer: I believe you are taking time with something that is not in issue here. I take it that the General Counsel has no issue with you about the existence of these rules, at all. You are merely trying to establish a showing that they are in existence.

Take a little recess.

(Short recess.)

Trial Examiner Spencer: All right; on the record.

Mr. Kriger: I would like the record to show that the witness conferred with Mr. Garver and Mr. Rappaport during the recess.

Trial Examiner Spencer: He wasn't instructed not to, was he?

(212) Mr. Kriger: I think that follows.

Mr. Rappaport: As long as he has shown that, I would like to have the record show that he merely pointed out to me a section in the Local Union's bylaws to the effect that every leader must make his own contract, and that is all he pointed out to me.

Trial Examiner Spencer: All right. Now that we have all that duly on the record, let's proceed.

Q. (By Mr. Kriger) Offering you a document which for identification has been marked Respondent's Exhibit 3, I will ask you to state what that is?

(Thereupon, the document above-referred to was marked Respondent's Exhibit No. 3 for identification.)

Q. A. It is a contract between the Charles E. Hogan Office, in Chicago, and the Roy Acuff and his Grand Ole Opry Show, for an engagement at the Palace Theatre, Akron, four days, starting August 18, 1949, at which they did not appear.

Mr. Kriger: I ask that the "at which they did not appear" be stricken as not part of the answer.

The Witness: Well, that is what it is, sir.

Q. (By Mr. Kriger) Well, this is the contract, is it not, Mr. Gamble? A. For an appearance.

Q. And it bears your signature, does it not? (213) A. Yes, sir.

Mr. Kriger: All right, I offer Respondent's Exhibit 3, again with particular reference to the paragraph in the same language as I had indicated on Respondent's Exhibit No. 2.

Trial Examiner Spencer: Any objection to the receipt of the exhibit?

Mr. Garver: No objection.

Trial Examiner Spencer: It will be received.

(The document heretofore marked Respondent's Exhibit 3 for identification was received in evidence.)

Q. (By Mr. Kriger) Now, Mr. Gamble, all through the negotiations which you have had with Mr. Teagle, Mr. Teagle has made a number of propositions to you, has he not? A. Several, yes.

Q. On one occasion he indicated that he would like employment for his members on all engagements where you were having live talent at your show; is that correct? A. That is so.

Q. And later, in an attempt to compromise the issue, he says that he would be content if his members were em-



ployed on 50 per cent of the engagements; is that correct?

A. That is so.

Q. And he offered you a two-month contract, did he not, on one occasion? A. Mr. Kriger, he has never offered me a contract of any kind. (214) I have never seen that contract or that document, before you handed it to me today.

I did not know of its existence until you handed it to me today.

Q. Didn't you and he agree on a two-month— A. Arrangement.

Q. That is right. A. That is right.

Q. And wasn't I supposed to write something up? A. That I did not understand.

Q. You did not understand that? A. That I did not understand.

Q. But he did offer you a two-month arrangement, and you were willing to accept it; is that correct? A. Subject to the conditions which I have noted.

Q. In fact, there were a number of other suggestions that Mr. Teagle made in an effort to reach a settlement of this controversy, were there not?

Mr. Garver: Well, Mr. Examiner, there is constantly a suggestion in this thing that Mr. Teagle was making the proposals and that Mr. Teagle was making the effort. The questions imply that, and the evidence in this record, concerning which there is now some examination, is to the contrary.

It was the theatre, through Mr. Gamble, who was trying to work things out so that they could operate. They were (215) seeking to have Mr. Teagle let them operate in a certain fashion. Certainly there was this cross current of different positions taken, but it wasn't the effort of Mr. Teagle; it was Mr. Gamble's persistent effort to have Mr. Teagle let him go ahead and run shows without the interference of the musicians local.

Trial Examiner Spencer: Now, Mr. Witness, will you answer the question, please?

Mr. Kriger: I move that the remarks of counsel be stricken.

Trial Examiner Spencer: Well, insofar as they were in objection to your question, I don't want to strike them. I won't strike them.

Mr. Garver: I didn't hear the ruling.

Trial Examiner Spencer: Denied, the motion is denied.

Mr. Kriger: Would you read the question?

Trial Examiner Spencer: I can tell you what the question was.

Q. Did Mr. Teagle make any other suggestions? A. Two, specifically.

Q. What was that? A. The first that we employ a pit orchestra to play overtures at intermissions at any time that we employed a traveling band on stage. That was one.

The other suggestion was that we employ a house or pit orchestra to play for whatever variety talent accompanied said (216) name bands and stage shows when we played them, and then his third proposal, which we just mentioned; of playing at least 50 per cent of those shows.

Q. Now, on all of these occasions, in which his members were to appear or play, his suggestion was that his members actually work on those occasions; isn't that true? A. I would imply that.

Q. Well, he actually told you that he wanted his people to work, didn't he? A. And I actually told him they were not needed.

Q. And you told him you didn't want them to work; you didn't need them to work; is that correct? A. That is correct.

Q. But he said that he wanted his people to work on those occasions? A. That is right.

Q. He never ask you to pay them for not working, for not being there? A. That is right.

Q. And you were present at the meeting on May 8th, or was it May 9th? A. May 8th.

Q. And do you recall at that meeting, Mr. Teagle indicated that he might even suggest less than 50 per cent of the appearances? (217) A. I do not recall that, Mr. Kriger.

Q. You do not recall it. And do you recall that Mr. Teagle asked you, or it may have been Mr. Rappaport—he

asked one of the company representatives there what they would offer by way of employment of our people. A. I believe that is right, and our offer was that we would employ local musicians when we had a need for them, when there was work for them to do in the pit, and that is where we got into the discussion of perhaps the possibility of assembling shows that would require their services.

Q. And you said that you would guarantee nothing; isn't that correct? A. We prior to that time, Mr. Kriger, had investigated the possibility of making them a guarantee, and we could not get such a guarantee from our agents, from the Edward Sherman Agency and the Charles E. Hogan Agency.

Therefore, we would be guaranteeing that we would use musicians whether we needed them or not.

Q. So you said— A. We can make no guarantee.

Q. So you told the union you would guarantee nothing; is that correct? A. I would be more inclined to believe that I said we could not make a guarantee.

Q. And that is what your position from the very beginning was, (218) was it not? A. From the time they made this suggestion that we have such type shows. You see, we had several meetings before we discussed the possibility of assembling the type of show that would actually give them work. Not made work, but actually a show that would require the services of a house orchestra, such as a vaudeville unit, such as this RKO Unit that we were going to try and negotiate for.

Q. Now, you were negotiating over a period of better than two years, were you not? A. That is right.

Q. All through 1948, you did no negotiating? A. There may have been a meeting. I would not state that there was or was not, Mr. Kriger, but after the instance of the Eberly show, the case did lie dormant for a long while.

Q. And you didn't try to reopen it until the early part of 1949? A. That could be right. I would not try to specify the exact date myself, but it could be right.

Q. Isn't it a fact, Mr. Gamble, that right away after the early part of 1949, after you resumed negotiations, you

told Mr. Teagle that if he didn't accept your proposition, that you would file a charge with the Board? A. I would not attempt to pinpoint that down to the early part of 1949, but I do tell you this, that our meeting of May (219) 8th, we advised them that we intended to file a charge, and we would like a final meeting with them before filing that charge, to see if we couldn't resolve our differences without resorting to the Labor Board, and Mr. Rappaport came up from Indianapolis for that May 8th meeting, so they were advised some time in there that that was our intention, and in the absence of being able to work out an agreement with them, that we would resort to the Labor Board.

Q. Well, hadn't you told Mr. Teagle back in January of 1949 that if he didn't accede to your wishes, you would file a charge with the Board? A. I don't visualize myself threatening Mr. Teagle, as you imply, by phrasing your questions as you do.

Mr. Teagle's relationship and my own, however difficult it has been, has always been kept on a pleasant basis, and I am sure I have never threatened him, and I don't think he has ever threatened me.

Q. Well, let's put it this way, Mr. Gamble: Do you recall a telephone call to your brother in Indianapolis, and your advising Mr. Teagle that your brother had told you to tell him that if they received an adverse reply, they would proceed against Local 24, in the same manner as they had proceeded against the Indianapolis local? Do you remember that? A. I believe I do.

(220) Q. And you conveyed that information at that time— A. That we had been successful in working out an agreement, that we had been successful in reaching a settlement in Indianapolis, and that in the event that Mr. Teagle and I were not able to solve our differences in negotiation—and they were all free and open—that we would be compelled to resort to such action.

Q. And that meant filing a charge with the Board? A. That is right.

Q. And that was back in January of 1949? A. I will not confirm or deny that date, Mr. Kriger. I could probably



go through my correspondence and give you a more definite answer on it. I don't recall just when it was.

Q. How long after the meeting of May 8th or May 9th was the charge filed with the Board?

Mr. Rappaport: We object to that. The record speaks for itself, when it was filed.

Trial Examiner Spencer: I agree, sir.

Q. (By Mr. Kriger) Now, after the charge was filed, Mr. Teagle was still willing to bargain with you—

Mr. Garver: I object to that, constantly suggesting that there was a willingness to do something on the part of the Respondent.

That isn't breaking the facts down in any way. It calls for an opinion on the part of this witness as to whether he (221) was willing.

Trial Examiner Spencer: I think the form of the question is objectionable, because of the fact that the term "bargaining" has a sort of a legal connotation.

Mr. Kriger: I will withdraw the question; I will make it very specific.

Q. (By Mr. Kriger) Did you meet with Mr. Teagle during the summer? A. Of what year?

Q. 1949. A. Did you not go to California in the summer of 1949, to go to San Francisco?

Trial Examiner Spencer: Addressing Mr. Teagle?

The Witness: Addressing Mr. Teagle.

Mr. Teagle: Should I answer?

Mr. Kriger: Surely.

Mr. Teagle: I went there in the first part of June, I believe, 1949.

The Witness: Then I did; I conferred with him shortly after his return from the coast. Mr. Reg Light was present.

Mr. Kriger: Mark this, please.

(The document above-referred to was marked Respondent's Exhibit No. 4 for identification.)

Q. (By Mr. Kriger) Offering you a document which for identification has been marked Respondent's Exhibit



No. 4, (222) I will ask you whether or not that is a letter from you to Mr. Teagle, dated the 20th of July, 1949? A. The original is my letter. I have not compared it with the duplicate, but the original is my letter.

Q. The original is your letter? A. My letter and my signature.

Mr. Kriger: I offer Respondent's Exhibit No. 4.

Trial Examiner Spencer: Mr. Witness, do you want to compare that with the original? Do you have some doubt?..

The Witness: I just didn't take the time, sir.

Trial Examiner Spencer: Well, you had better look at it.

Mr. Garver: Mr. Examiner, this is correspondence about which I am in a position to agree.

Trial Examiner Spencer: All right, if you can stipulate.

Mr. Garver: What are we on, now? Respondent's Exhibit 4?

Respondent's Exhibit 4 for identification appears to be a copy of a letter dated July 20, 1949, from Mr. Gamble to Mr. Teagle.

We are now marking the original of that letter of July 20th from Mr. Gamble to Mr. Teagle as Respondent's Exhibit 4; is that correct?

Mr. Kriger: I would prefer to offer the copy and retain the original in our file.

(223) Trial Examiner Spencer: Well, if counsel is willing.

Mr. Garver: Very well, I am willing to stipulate that that copy is a correct copy, and agree to it being received in evidence.

Trial Examiner Spencer: And you offer the exhibit?

Mr. Kriger: I offer it, yes.

Trial Examiner Spencer: It is offered and received without objection.

(The document heretofore marked Respondent's Exhibit No. 4 for identification, was received in evidence.)

Mr. Kriger: Will you mark this?

(Thereupon, the document above-referred to was marked Respondent's Exhibit No. 5 for identification.)

Mr. Garver: Mr. Examiner, I take it Mr. Kriger is now offering a letter dated August 6th, 1949, from Mr. Teagle to the Palace Theatre, and subject to later comparison, of course, I agree that that is a true and correct copy and am willing that it be received.

Trial Examiner Spencer: Are you offering it, Mr. Kriger?

Mr. Kriger: I offer it.

Trial Examiner Spencer: As Respondent's Exhibit No. 5 for identification. It is received.

(The document heretofore marked Respondent's Exhibit No. 5 for identification was received in evidence.)

(224) Mr. Kriger: Mark this, please.

(Thereupon, the document above-referred to was marked Respondent's Exhibit No. 6 for identification.)

Mr. Kriger: Respondent's Exhibit No. 6 is a letter from Ron Gamble to Mr. Teagle, dated August 17, 1947. I offer Respondent's Exhibit No. 6.

Mr. Garver: No objection.

Trial Examiner Spencer: Received.

(The document heretofore marked Respondent's Exhibit No. 6 for identification was received in evidence.)

Mr. Kriger: Mark this, please.

(Thereupon, the document above-referred to was marked Respondent's Exhibit No. 7 for identification.)

Mr. Kriger: Respondent's Exhibit No. 7 is a copy of a letter from Mr. Teagle to Mr. Gamble, dated August 22nd.

Mr. Garver: From Mr. Gamble to Mr. Teagle.

Mr. Kriger: I beg your pardon, from Mr. Gamble to Mr. Teagle, dated August 22, 1949.

I offer Exhibit No. 7.

Mr. Garver: No objection.

Trial Examiner Spencer: Received.

(The document heretofore marked Respondent's Exhibit No. 7 for identification was received in evidence.)

(225) Mr. Kriger: Mark this, please.

(Thereupon, the document above-referred to was marked Respondent's Exhibit No. 8 for identification.)

Mr. Kriger: Respondent's Exhibit No. 8 is a letter from Mr. Teagle to Mr. Gamble, dated September 14, 1949.

(Thereupon, the document above-referred to was marked Respondent's Exhibit No. 9 for identification.)

Mr. Kriger: Respondent's Exhibit No. 9 is a copy of letter from Mr. Gamble to Mr. Teagle, dated October 13, 1949.

(Thereupon, the document above-referred to was marked Respondent's Exhibit No. 10 for identification.)

Mr. Kriger: And Respondent's Exhibit No. 10 is a copy of a letter from Mr. Teagle to Mr. Gamble, dated October 24, 1949.

I offer Respondent's Exhibits 8, 9, and 10.

Mr. Garver: No objection.

Trial Examiner Spencer: They may be received.

(The documents heretofore marked Respondent's Exhibits Nos. 8, 9, and 10 for identification, were received in evidence.)

Trial Examiner Spencer: Now, you understand, if counsel representing the company has any objection, I am not excluding you. I assume that if you don't state an objection, that you (226) have none.

Mr. Rappaport: I have none. I just wanted to see whether a certain letter was among these.

Q. (By Mr. Kriger) Now, referring back to the meeting of May 8th, Mr. Gamble, is it your position that the documents which were initialed by Mr. Teagle and Mr.

Rappaport constituted a binding agreement? A. I did not say that, sir.

Q. What was your understanding? A. It was my understanding, and I so stated, that it was a tentative agreement, subject to the approval of the Executive Board of Local 24—

Q. And that was the offer of the company, was it not? A. It was not an offer, Mr. Kriger, it was what we agreed to in that offer, subject to approval.

Q. That was the position of the company, was it not? A. And the union.

Q. And the union? A. And the union. It was not our position.

Q. You mean to say that Mr. Teagle had agreed to that? A. Tentatively he had put his initials to it, and it was to be submitted to the Board, and specifically he was to let me know by Tuesday.

Q. Now, isn't it a fact, Mr. Gamble, that Mr. Teagle initialed that only as evidence of receipt of that offer from the company? (227) A. That very definitely was not my understanding.

Q. Your understanding was that it was an agreement? A. A tentative agreement, subject to approval.

Q. But in any event, it never went into effect? A. He advised me that the Board turned it down.

Q. And it never was binding upon either party? A. That is right.

Q. Now, relative to the employment of local musicians, there is room to play there, is there not? A. We have an orchestra pit, if that is what you mean.

Q. You have an orchestra pit? A. That is right.

Q. Your objection to the employment of the local people isn't because it is physically impossible to find a place for them to play? A. That is so.

Q. And your objection to the employment of local people at the same time that you may have another orchestra there, is based purely upon economic considerations, is it not? A. No, sir.

Q. What are the other considerations? A. They are not needed; they would interfere with the operation of the

theatre; the rate at which we had paid them, which had subsequently then been increased arbitrarily by the union, the theatre being notified by letter that hereafter and (228) henceforth this is your new rate, and the fact that they would play from two to four shows additional to what they were being paid as standby, would make it a burden that the theatre could not carry.

Q. And did you discuss those matters with the union?

A. Many times.

Q. And you exchanged ideas on that? A. Yes, sir.

Q. You told Mr. Teagle what you thought about those considerations, and Mr. Teagle told you what his position was? A. That is so.

Q. And he tried to explain to you how it was possible for you to employ these people, did he not? A. He had his ideas, yes.

Q. Did you ever have a written contract with Local No. 24? A. We have never been able to locate one.

Q. Your files don't show any? A. Nor do the union files.

Q. That is right. So far as you know, no such contract ever was in existence? A. That is so.

Q. In the years past? A. That is so.

Q. Mr. Gamble, during the period in which you did employ local orchestras, which was—you were here part of the time, (229) were you not? A. No, sir.

Q. Are you familiar with the manner in which they were paid? A. Yes, sir.

Q. And in what way were they paid? A. The same as all our employees. We do a payroll check at the end of our fiscal week. We didn't operate on a calendar week—that is, from Saturday to Sunday, or from Monday to Saturday; our week would usually end on Tuesday or Wednesday, and one day was designated as a payday, and we would draw one check covering the entire amount, and the payroll envelopes would be made up, and they would come in and sign signature cards for their pay.

Now, they could come in Wednesday or any subsequent day.



Q. In other words, you draw one payroll check covering your entire payroll? A. That is right.

Q. And that is drawn on the Akron bank where you maintain your accounts? A. That is right.

Q. And then you of course have the cash at hand, and you pay individually in cash to each employee? A. That is so.

Q. And that of course has been your policy for some period of time? (230) A. It has been changed recently. We now pay by check.

Q. You now pay by check? A. That is right.

Q. But at that time your policy was to pay by cash? A. At that time we had paid by cash and received a signature in receipt for the wages or salaries.

Mr. Kriger: I believe that is all.

#### RE-DIRECT EXAMINATION.

Q. (By Mr. Garver) Mr. Gamble, I omitted to inquire of you as to the number of persons that you customarily employ at the theatre. Will you indicate the number and the classifications? A. 50 people.

Q. I am not talking about musicians. A. Exclusive of musicians we employ 49, 50, or 51 people. It would vary from week to week.

Q. And in general, what is the classification or type of work they perform? I take it you have some office people? A. We have management personnel, office personnel, a motion picture projectionist, stage hands, engineers, cashiers, doormen, ushers, cleaners, porters, maids, concession employees. I believe that covers it.

Q. Directing your attention to the time of the Ray Eberly show, who were the General Artists Corporation at that time? A. They are the office or agents who represent Eberly. (231) They would be a principal or agent acting in behalf of Eberly.

Q. Directing your attention to what has been marked for identification as G. C. No. 13, when did such a copy of that document first come into your possession?

Mr. Kriger: Which one was that? The wire?

Mr. Garver: Yes.

Mr. Kriger: We had better note an objection to that question, because in the event the instrument is not received, I don't want to be waiving my objection.

Mr. Garver: I don't quite grasp your objection.

Mr. Kriger: I mean, you have tendered that over objection, and the Examiner will rule on its admissibility—

Mr. Garver: I am not offering it.

Trial Examiner Spencer: It hasn't been admitted, yet. That is true. I don't see any objection to the question concerning the document.

Mr. Kriger: I just want to save my objection.

Trial Examiner Spencer: All right. You may answer.

Q. (By Mr. Garver) In other words, directing your attention to the time of the Eberly show and your plans for it, when did you receive such a document as has been marked for identification as G. C. 13—if you did? Just give me the facts about it. A. I am inclined to believe, Mr. Garver, that I did not receive this until some time in 1949, when I requested my (232) New York Office to send me down their file, when I was preparing material to send to Mr. Rappaport.

Q. And your New York Office sent you this, together with the file they had? A. Sent me their file, and I made copies of the material in their file for myself and for Mr. Rappaport, and this is a copy of the wire, one of the items in their file.

Mr. Garver: In view of these questions, I am permitting the matter to stand as previously. That is all of this witness.

Trial Examiner Spencer: You are excused, sir.

(Witness excused.)

Mr. Garver: Mr. Examiner, there are a couple things that I thought I might ask—I don't want to say a couple, but very few things that I had still in mind to ask Mr. Teagle, but I assume that he will probably be on later in the case, and there is no use calling him specially.

With that very minor reservation, I am prepared to rest, so—well, there may be also another matter before I close.

Mr. Rappaport, could you come forward, please?

Trial Examiner Spencer: You are calling him as a witness, are you?

Mr. Garver: Yes.

LEO M. RAPPAPORT, a witness called by and on behalf of the General Counsel, (233) being first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

Q. (By Mr. Garver) Mr. Rappaport, you are of course shown as an appearance; you have been sitting over here as representing the charging party in this matter? A. That is correct.

Q. I take it the record already shows your name and address.

Mr. Rappaport, there has been, as you know, testimony in this record concerning a meeting on May the 8th. I wonder if you would proceed to tell us your recollections of who was present there and what took place at that meeting? A. On behalf of Gamble Enterprises, there were present Mr. Ron Gamble, his brother Lou Gamble, from New York, and Mr. Leroy Furman, of the New York Office, and I.

On behalf of Local 24, Musicians Union, Mr. Teagle, Mr. Light, and a third gentleman whose name escapes me at the moment.

Q. Was Mr. Dilley there at that time? A. That is the man.

Q. Was there an agreement or a document of some sort prepared during the course of that meeting? A. There was, at the conclusion of the meeting, which had lasted approximately two hours.

Q. And what was that? It has been received in evidence here. (234) What was that document supposed to

be? A. That document was supposed to represent the joint views of those present, as a result of talking out the position which the two contending parties had taken prior to that time. The union, having insisted that a local orchestra must be employed every time a traveling band was brought in, and the employer taking the position that they could not do that because they had no use for such an orchestra, and it was economically unsound.

Then there were several changes and recessions on the part of the union in their demands. They finally made a proposal that for every stage band that was brought—

Q. You mean traveling band? A. Every traveling stage band brought in, they should have one employment in the pit with a show assembled by the local theatre, unaccompanied by a traveling band.

I was the spokesman for the employer in that conference, and pointed out to them that it was impossible to enter into any such agreement, because the employer could not assure himself of any ability to carry it out, and the only basis on which an agreement can be made was that the theatre would employ local musicians if, as and when they needed them and could use them, and as a result, I dictated this memorandum to Mr. Teagle; who wrote it on the typewriter, and suggested that so there should be no misunderstanding—

(235) Q. Are you referring to G. C. No. 17? A. G. C. No. 17—we should both initial it, and each one received an initialed copy.

Q. Are those your initials on G. C. No. 17? A. Those are my initials, and those are Mr. Teagle's initials.

Q. Would you clarify for us what was the understanding in this respect? Suppose, for example, that you would have had, or were to have 20 weeks or 20 performances during which you would have had a traveling band. Was there some guarantee that you were supposed to give the union in that connection? A. Under that agreement?

Q. Yes. A. Quite the contrary.

Q. I mean, what was the position of the union? A. Well, the original position of the union was that if we



had 20 traveling stage bands appearing, we should have to assemble 20 shows of some sort in which we would give their members employment.

Q. Is that the nature of the guarantee that has been talked about in this record? A. Correct. And we pointed out to them that that was just impossible to guarantee.

Q. Is there anything further that you wish to add with respect to the nature of this document drawn up on May the 8th, and what your understanding was about it at that time, or what took (236) place at that meeting? A. Other than the agreement as outlined here briefly was to be submitted to the Executive Board of the union for approval or disapproval, and subsequently, instead of getting approval or disapproval, I received a letter from Mr. Teagle to the effect that it had been referred to counsel.

Q. Mr. Rappaport, during how many years have you had a direct relationship with theatres as an attorney, representing them, and operating theatres? A. Well, I have been actively in the theatre business myself, outside of my professional capacity, since 1916.

Q. And you have had occasion to travel to various parts of the country and become acquainted with the theatre industries generally throughout the country? A. I think I am, yes.

Q. Your acquaintance is based upon your actual experience in handling various matters throughout the country for theatres in connection with the operation of theatres; is that so? A. Well, I haven't handled theatre matters throughout the country. I have in New York, for instance, but not everywhere. In other words, I haven't been an attorney for theatres all over the United States.

Q. Are you familiar with the developments that have taken place in the theatre industry over the last 20 years, let us say, with respect to their policy of exhibiting films in (237) vaudeville and so on? Could you sort of trace it for us? A. Yes, and farther back than that. In 1916, when I first went into this business, there were three types of theatrical performances. One was the so-called vaudeville house, which consisted of independent and separate acts, usually about eight, accompanied by a local orchestra.



The other was the legitimate stage where drama, comedy and so forth was performed, and the third, which was the newest on the scene, was motion pictures. Motion pictures began to crowd vaudeville off the scene, and there developed from that what was called combination houses, partly vaudeville and partly pictures.

Then, eventually they were driven out of business, and most of them went into a straight picture policy, and subsequently, in order to give variety, engaged traveling stage bands of national reputation for an occasional change in their programs.

Now, more recently, I understand, the so-called combination house has met with some success in certain spots, not everywhere.

Q. By a "combination house," you mean a house which would exhibit films, and also has— A. Some vaudeville.

Q. Well, is there any relationship between the development of talking movies and its effect upon— (238) A. Music? Very definitely.

Q. Its effect upon the operation of theatres? A. Prior to the talkie, music was almost a necessity as an accompaniment for silent pictures, but with the advent of the talking picture, music passed out of the theatres, except for these traveling bands.

Q. Is there anything further that you wish to add with respect to the transition that has taken place in the theatre from its vaudeville days down to the present time of the combination? A. Well, I might say this, that I know of no house, no theatre in the country, that employs local musicians, except for the purpose of accompanying acts that they put on.

Now, there is Radio City, for example, in New York, where they have a permanent organization, like the Rockettes, and so forth, where they have an orchestra.

There are a few other theatres of that sort in the country, but otherwise, practically none that maintain music purely for entertainment purposes, unless it be a name band on the stage.

Q. Can you tell us a little bit about the relationship of name bands and their relationship to the industry, as compared to local musicians and so on? A. Well, of course the character of the music of so-called name bands is entirely different from anything that any (239) local orchestra anywhere can or does put on. They have national reputations, they make phonograph records; they are known to the public and therefore have drawing power, which a local orchestra does not have.

Q. Is there anything further on that subject that you wish to add, sir? A. No, sir.

Mr. Garver: That is all.

#### CROSS EXAMINATION.

Q. (By Mr. Kriger) Mr. Rappaport, you are familiar with the Palace Theatre in Cleveland, are you not? A. I wouldn't say that I am very familiar with it. I have understood that they run a combination policy of some sort there now, pictures and vaudeville.

Q. You do know, of course, that they— A. I haven't seen any of their shows.

Q. You do know, of course, that they employ a local orchestra? A. They are bound to, where they have a combination house, and simply engage stage talent.

Q. And they also employ the local orchestra on those occasions when they have a name band? A. I don't know that they do that.

Q. In fact, there are a number of such arrangements throughout the industry? A. I know of none of that sort.

(240) Q. You know of none? A. No.

Q. And of course, your observation that the local orchestra is not capable of producing the type of music that the name band does is merely based upon your opinion? A. Well, it is not only my opinion; it is shared throughout the industry.

Q. Are you familiar with the fact that very often, when a name band loses a man, they will recruit men

locally? A. I have known of instances where, for instance, if one instrumentalist got sick or broke his leg or something, and they couldn't replace him quickly, they would rely on some local person because they couldn't get anybody fast enough.

Q. And you are also familiar with the fact, are you not, that there is a lot of musicians that just don't like to travel around, but like to stay home? A. Well, that would be my guess, but I don't know it.

Q. And their desire to stay home and play music bears no relation to the type of music that they are able to play? A. Are you talking about the individual musician, or, are you talking about organizations?

Q. I am saying that there are a lot—I am asking you whether or not, taking your own community, Indianapolis, whether there are a lot of musicians in Indianapolis who are just as good musicians as appear in these name bands, but (241) they just don't like to travel around; they like to stay home in Indianapolis? A. No, I would say that is not true.

Q. You mean all the good musicians are traveling around with Tommy Dorsey and the others? A. No. You asked me whether there were any musicians in Indianapolis that were not just as good as the traveling bands, to which I replied I know of none. There aren't any, and I am pretty well familiar with the musicians in Indianapolis.

In the first place, these traveling bands play an entirely different style from what any local orchestra does.

Q. Are you also familiar with the fact, Mr. Rappaport, that there is going on now what is known as a rebirth of music, local music, all over the country? A. No, I don't know where that rebirth is taking place. I know that in Indianapolis, they have tried to keep alive a so-called symphony orchestra with great difficulty. It has been a pretty difficult birth, if they have had one.

Q. People are becoming more and more interested in local music, are they not? A. No.

Q. You didn't hear about that? A. No.

Trial Examiner Spencer: You know, I don't like to interrupt, but how are we going to get anywhere on an issue of (242) this case by an extensive comparison of the merits of the local musicians with traveling musicians?

Mr. Kriger: No, I am just laying the groundwork for further testimony along that line.

Q. (By Mr. Kriger) Now, Mr. Rappaport, is it your position that the documents labelled General Counsel's Exhibit No. 17 constituted an agreement? A. It constituted a meeting of the minds of the persons who were present at that meeting, subject to approval by the union as such, and the employer.

Now, as far as the employer was concerned, there wasn't any doubt in my mind about the approval of it, because the New York Office as well as the local theatre were represented in that meeting.

Q. The fact is, is it not, Mr. Rappaport, that this was merely the company's offer, the company's proposal? A. No, I don't think so.

Q. You don't think so. A. No, I think that was the culmination of the conference that lasted at least two hours: I might say there wasn't any reason for the company merely to submit an offer in writing at that time.

Mr. Kriger: Will you mark these, please?

(Thereupon, the documents above-referred to were marked Respondent's Exhibits Nos. 11 and 12 for identification.)

(243) Q. (By Mr. Kriger) Respondent's Exhibit 11 is a letter addressed to myself by Mr. Leo M. Rappaport, dated June 13, 1949, and Respondent's Exhibit 12 is a copy of a letter—or, is a letter from Mr. Leo M. Rappaport to myself, Mr. Herschel Kriger, dated June 15, 1949.

I offer Respondent's Exhibits Nos. 11 and 12.

Mr. Garver: No objection.

Trial Examiner Spencer: Counsel concede authenticity by not objecting to it. It may be received.

(The documents heretofore marked Respondent's Exhibits Nos. 11 and 12 for identification were received in evidence.)

Trial Examiner Spencer: Have you completed your examination, Mr. Kriger?

Mr. Kriger: Just one second.

That is all I have of Mr. Rappaport.

Trial Examiner Spencer: All right, you are excused.  
(Witness excused.)

Mr. Garver: Mr. Examiner, at this time the General Counsel rests.

Trial Examiner Spencer: All right. What about counsel for Gamble Enterprises, Inc.?

Mr. Rappaport: We have no further evidence to offer.

Trial Examiner Spencer: What is your pleasure, Mr. Kriger?

(244) Mr. Kriger: Now comes counsel for the Respondent, by its counsel, after the conclusion of the case of the General Counsel, and reserving the right to present its case in the event of the refusal of such motion, does move for dismissal of the complaints, for the reason that the General Counsel has failed to sustain the burden of proof as to the allegations of such complaint.

Trial Examiner Spencer: I don't think I am in a position to pass on the legal issue at this time, and I will reserve a ruling on your motion, but at the same time tell you that if you rest on my reservation of ruling, you do so at your own peril.

Mr. Kriger: I reserve the right to proceed.

Trial Examiner Spencer: Very well. I think we can't take on any more this afternoon.

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Mr. Kriger: Well, may I put on one witness for about three minutes?

Trial Examiner Spencer: If you are really serious about three minutes, you may, but I don't intend to stay here much later.

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LEE REPP, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:



DIRECT EXAMINATION.

Q. (By Mr. Kriger) Would you state your name, please? (245) A. Lee Repp.

Q. And your address, Mr. Repp? A. 2828 Fairmount Boulevard, Cleveland Heights, Ohio.

Q. And what is your position? What is your occupation? A. I am president and business agent of the Cleveland Federation of Musicians.

Q. And as such, in such capacity, I will ask you whether or not you are acquainted with the basis of the employment of the musicians at the Palace Theatre in Cleveland? A. I am.

Q. Will you state whether or not your union has a contract with the Palace Theatre? A. We do have, and have had for many years.

Q. Does it provide for the employment of your members? A. It does.

Q. And does it further provide for the employment of your members on such occasions when a traveling band is playing at the theatre?

Mr. Rappaport: We object to that. If there is a contract, the contract itself is the best evidence. We have no way of cross examining or knowing what is in that contract unless it is produced. We don't take just a person's word for it.

Trial Examiner Spencer: Is your contract written, sir? Do you have a written contract?

The Witness: Yes, sir.

(246) Trial Examiner Spencer: The point is well taken, if he wants to insist on his objection.

Mr. Kriger: Might I make a remark off the record?

Trial Examiner Spencer: Not if it has to do with the issue.

Mr. Kriger: Okay.

Q. (By Mr. Kriger) Are you familiar with the practice at the Palace Theatre in Cleveland? A. Yes, sir.

Q. And are the members of your union employed on such occasions as the traveling orchestras play in the theatre?

Mr. Rappaport: Just a minute. We object to that, because it is entirely immaterial as to the issues here, as to what they do in Cleveland, and presumably, since the witness has testified they have a contract, their practice corresponds to the contract, and the contract would be necessary before we go into a question of practice.

Trial Examiner Spencer: I do not understand the materiality of the examination. You will have to enlighten me.

Mr. Kriger: I will. Mr. Rappaport testified that the industry practice was for there to be no employment of local musicians on these occasions.

Trial Examiner Spencer: Is the issue in this case to be governed by some practice? As I understand it, the issue comes under Section 8(b)6.

Mr. Kriger: That is right.

(247) Trial Examiner Spencer: I don't see why establishing practice in Cleveland would have anything to do with whether or not this particular Respondent has caused or attempted to cause things that are prohibited under that section.

Mr. Kriger: Only trying to meet the evidence already presented by the General Counsel.

Trial Examiner Spencer: Well, perhaps some irrelevant testimony got in. I am sorry; you should have objected and I would have tried to keep it out.

Mr. Kriger: I thought it was pertinent.

Mr. Rappaport: Furthermore, in support of the objection, the Cleveland house is what we call a combination house, which does produce vaudeville.

Trial Examiner Spencer: Well, I don't care what sort of house it is. You may make an offer, Mr. Kriger.

Mr. Kriger: Well, the witness, if allowed to testify, would state that the Cleveland Palace Theatre does employ local musicians on such occasions as a traveling band plays at such theatre.

Trial Examiner Spencer: I have heard your offer. Is that the sole purpose you called the witness for?

Mr. Kriger: One more question.

Trial Examiner Spencer: Well, I will set you off on that line of inquiry by refusing it.

Mr. Kriger: I would like to proffer one more question.

(248) Trial Examiner Spencer: But not on the line just excluded, I take it? I am excluding that part. You have made your offer, but I have excluded it.

Mr. Kriger: I would like to proffer one more question.

Trial Examiner Spencer: Is it on another line?

Mr. Kriger: No, the same line.

Trial Examiner Spencer: Well, I have excluded it. You have stated what you were attempting to prove. Do you want to elaborate on it?

Mr. Kriger: Yes, sir.

Trial Examiner Spencer: Well, elaborate on your offer.

Q. (By Mr. Kriger) When the local band plays with the traveling orchestra, what type of services does it render?

Mr. Garver: Just a moment. The Examiner, as I understand it, instructed you to indicate further what you were going to offer, not to ask another question.

Trial Examiner Spencer: Well, you would expect to elicit something in response to that question? Do you want to elaborate your offer?

Mr. Kriger: Yes.

Trial Examiner Spencer: What do you expect to elicit?

Mr. Kriger: The witness, if allowed to answer, would further state that on such occasions, the local orchestra plays an overture, during intermission, and after the performance by the traveling orchestra.

(249) Trial Examiner Spencer: I have heard your offer, and I am foreclosing it.

Mr. Kriger: The witness further, if permitted to testify along this line, would testify that the practice of employment of local musicians at the same time as a traveling orchestra plays in theatres is not uncommon in the entertainment industry.

Trial Examiner Spencer: Well, you haven't qualified the witness to answer a question like that. He simply hasn't been qualified.

Mr. Kriger: I can qualify him, then.

Trial Examiner Spencer: Well, now, then, Mr. Kriger, if there is such a practice, it is either a legal or illegal practice, and would the fact that there is such a practice make it legal?

Mr. Kriger: To the extent where the charging party claims that the practice is uneconomic, and as one of its bases for refusing to go along on the practice is economic basis, if I understand the witness properly, I think the fact that some employers may engage in it and join in the practice is pertinent to whether the practice is economic.

Trial Examiner Spencer: All right. I have heard your offer and it is excluded.

You are excused.

(Witness excused.)

(250) Trial Examiner Spencer: We will recess until 10:00 o'clock. I am assuming you have some witnesses to present.

Mr. Kriger: Yes.

Trial Examiner Spencer: Very well, we will recess until 10:00 o'clock.

(Whereupon, at 5:05 o'clock; p.m., Wednesday, March 15, 1950, the hearing was adjourned until tomorrow, Thursday, March 16, 1950, at 10:00 o'clock a.m.)

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(251) Thursday, March 16, 1950.

Pursuant to adjournment, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

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(253) Trial Examiner Spencer: Are you all set, gentlemen?

Mr. Kriger: Yes. Take the stand, Mr. Teagle.

Trial Examiner Spencer: Let the record show that Mr. Teagle has been recalled to the witness stand as a witness, now, for the Respondent.

LOGAN O. TEAGLE, recalled as a witness by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Trial Examiner Spencer: Mr. Teagle, you understand you have been sworn in and you are still testifying under oath?

The Witness: Yes, sir.

# DIRECT EXAMINATION.

Q. (By Mr. Kriger) Mr. Teagle, in your period of employment as business representative and secretary of the Musicians Union, have you ever had a written contract with the Palace Theatre? A. I don't think we have had a contract for 15 years at the Palace Theatre.

Q. I will ask you whether or not that period covers both the time that theatre was operated by Mr. Gamble, or, rather, Gamble Enterprises, and its predecessors? A. Yes, sir.

Q. Now, relative to the employment of the orchestra at (254) the Palace Theatre, as was recited by Mr. Houser when he was on the stand, who handled the transactions between the theatre and the union—or, rather, the transactions between the theatre and the band? A. I presume Mr. Houser did.

Q. Did you have any dealings—

Mr. Garver: Just a moment. I move that the answer be stricken.

Trial Examiner Spencer: Well, Mr. Witness, do you know who handled those transactions? If it is just a presumption, we will strike it. Strike the presumption.

If you know, answer it from your knowledge. If you don't know, say you don't know.

The Witness: Could they be more specific in the question?

Trial Examiner Spencer: Well, Mr. Kriger, can you?

The Witness: What transactions?

Mr. Kriger: I will state it this way:

Q. (By Mr. Kriger) Relative to the hiring of the orchestra for specific engagements, were those arrangements



made with you, or were they made with Mr. Houser for the band?

Mr. Garver: Objection. There has been no foundation in this record of the hiring of the orchestra for engagements as such. There has been a limited reference to one particular instance when they were used for that three-day local recital, and unless he is talking about that one particular thing, there (255) is no point in just talking about employment for engagements. There is no evidence of the local orchestra ever being employed for engagements as such.

Mr. Kriger: Now, I beg to disagree with counsel.

Mr. Garver: The question, then, certainly is too broad in view of my understanding of what the testimony has been.

Certainly Mr. Kriger is not prevented from asking a narrow question as to specific material that this witness may know about.

Trial Examiner Spencer: Now, just a minute. Let's not carry this on indefinitely. The witness may answer as to whether or not, in arranging for orchestras at the theatre, the theatre management dealt with the union or not.

A. It did not deal with the union.

Mr. Garver: I move that that—Mr. Examiner, I appreciate,—

Trial Examiner Spencer: Now, let's hear your motion. I don't want to hear a speech. Do you have a motion or objection?

Mr. Garver: I move that the answer be stricken.

Trial Examiner Spencer: It is denied.

Mr. Garver: May I be heard on my thinking?

Trial Examiner Spencer: No, sir; I do not care to hear it. You have your exception, sir.

Mr. Garver: Well, there is something I want to point out, sir.

(256) Trial Examiner Spencer: I do not care to hear you, sir.

Q. (By Mr. Kriger) Mr. Teagle, now would you explain what was the status or what was the purpose of the two per cent tax which was paid to you, I believe, by Mr. Houser, and which is set forth in General Counsel's Exhibit No. 5?

Mr. Garver: Objection.

Trial Examiner Spencer: Overruled.

Q. (By Mr. Kriger) Offering you for examination General Counsel's Exhibit 5. A. The two per cent local tax, we might say, is additional dues in a certain respect, that each member pays into the union. The leader collects the tax from the side man and then pays the tax to the office—that is, my office. It is a tax that is imposed on all of the members of the orchestra when they play engagements.

Q. And I will ask you whether or not that tax was imposed by votes of your organization? A. Yes, sir.

Q. And does any of that money— A. Resolutions of the organization.

Q. And is that a uniform payment which is made by all members of your organization when they work? A. That is right.

Q. Now, does any of that money come from the employer? A. No, sir.

(257) Q. What is the source of that two per cent? A. The leader collects it from the men and then turns it into the office.

Q. And would you say then that the source is the wages of the employees? A. That is right.

Q. Now, there was some reference in the testimony yesterday to the fact that there was an orchestra of nine men at the Palace Theatre. Would you state how the figure of nine was arrived at? A. We based the number of men on the seating capacity of a theatre. That was one reason.

And years ago, I believe that the musical director of the RKO made a tour of the houses of their circuit, including Akron, and requested a number of nine musicians for the house to meet the instrumentation requirements.

Q. And what is the purpose of establishing a minimum number of men for a certain sized establishment?

A. Well, at that time, so that they could properly play the vaudeville shows, had the proper instrumentation to play the vaudeville shows.

Q. I will ask you whether or not—shall I say “limitation” establishing certain standards as to number of musicians to play in various houses, is a uniform measure which is applied generally in this area, depending upon the size of an establishment? (258) A. That is right, and the other reason I gave.

Q. In offering you the constitution and by-laws and so forth of your local union, page 62, I will ask you whether or not those requirements are set forth on page 62? A. Yes, sir.

Q. And I will further ask you whether or not Gamble Enterprises, or any other operator of the Palace Theatre, has ever entered any objection to the rule requiring a minimum of nine men to play in the orchestra? A. None that I can recall.

Q. Do you recall a conversation which you had with Mr. Gamble back in the fall of 1947, at which time you first raised the question about employment of your members? A. I don't know just exactly what time during 1947, but I believe we did have a conference.

Q. On that occasion, did you ask for—

● Trial Examiner Spencer: Now, wait a minute, counsel. This is your witness, you know.

Mr. Kriger: I know.

Q. (By Mr. Kriger) Mr. Teagle, tell, on that occasion, if anything, you asked Mr. Gamble for? A. According to my memory, I believe that I talked to Mr. Gamble in his office at the theatre, the Palace Theatre, and suggested to him that we should negotiate relative to the (259) employment of local musicians in his theatre, the Palace Theatre.

And of course, we didn't reach any agreement, and I don't think the conference lasted very long, probably three or four minutes.

Mr. Garver: May I hear the question, please?

Trial Examiner Spencer: Yes, read the question.

(The reporter read the question and answer.)

Mr. Garver: I move that the answer be stricken as not responsive to the question, and an effort to suggest and characterize the nature of the meeting without answering the question.

Trial Examiner Spencer: Well, part of the answer is responsive, I think. The volunteered statement that the conference didn't last long, that portion may be stricken.

Q. (By Mr. Kriger) What did Mr. Gamble say to you relative to your suggestion that they employ your members?

Mr. Garver: Mr. Examiner, there is constantly through these questions, thrown into this record, suggestions and conclusions. I am objecting to that question as not being proper under direct examination.

Trial Examiner Spencer: The witness testified that he suggested to Mr. Gamble that they negotiate for the employment of musicians at the Palace Theatre. That was his prior answer. So, I think the question is somewhat leading, but otherwise I (260) think it is quite proper. You may answer.

A. I can't remember exactly what he said, although there was no date set for another conference.

Q. What if anything was done relative to the employment of your members at that time by the Gamble Enterprises?

Trial Examiner Spencer: Now, you are referring to the fall of 1947?

Mr. Kriger: That is right.

A. None of our members were employed.

Q. Now, do you recall whether or not Mr. Gamble or any other representative of Gamble Enterprises gave you any reason for not employing your members? A. I believe at one time Mr. Gamble told me that the reason he couldn't employ our local musicians was for an economic reason, that the ASCAP, which is the American Society of Composers and Authors and Publishers, had increased his fee in the theatre, and also they had to pay more for their pictures.

Q. Now, during that period that they were having stage shows come in, which the prior evidence shows was during the summer and early fall of—well, strike that.

During the time the stage shows came in, which the prior evidence shows was in the summer and fall of 1947, in what manner were you advised as to the fact that such shows were coming in? (261) A. Usually by receiving a copy of the contract from the booking agent.

Q. Did you receive copies on every occasion? A. I don't believe so.

Q. Did the company ever advise you that such shows were coming in during the summer and fall of 1947? A. No.

Q. Was the Ray Eberly contract sent to you by the booking agent? A. We received a contract from a booking agent, yes, on the Ray Eberly show.

Mr. Garver: Mr. Examiner, I would like to have the record note the time which it took the witness to answer that question as to whether or not they received a contract concerning the Ray Eberly show.

Trial Examiner Spencer: Well, I didn't time him. Did you, Mr. Garver?

Mr. Garver: What?

Trial Examiner Spencer: I didn't time him; did you? Now, this is a deliberate witness, and he takes a good deal of time on his answers. Whether he took any more time than he normally does on his answers on that one, I wouldn't be able to say in my official capacity.

Q (By Mr. Kriger) Now, Mr. Gamble testified that you had in effect threatened him that the Ray Eberly show would not go (262) on. Did you make such a threat, Mr. Teagle?

Mr. Rappaport: We object to that as calling for a conclusion. He can testify as to what was said and done, but not conclude whether it constituted a threat or not; that is for the hearing members to decide whether it was or was not a threat.

Trial Examiner Spencer: Well, I think your point is well taken.



Q. (By Mr. Kriger) Would you state what you told Mr. Gamble about Ray Eberly, and what your discussion was, Mr. Teagle? A. I don't remember of ever mentioning the Ray Eberly show to Mr. Gamble.

Q. No discussion with him about Ray Eberly? A. None whatsoever.

Q. Did Mr. Gamble at any time ever make an offer to you to discontinue stage shows if Ray Eberly played?

Mr. Garver: I object to that question.

Trial Examiner Spencer: Read the question.

(The reporter read the question.)

Mr. Garver: It seems to me he has got to first testify what discussions they had about the Ray Eberly show. It seems to me he has denied that there was any discussion.

And until he recalls what the discussion was, or that there was a discussion, he can't have counsel on direct throw that kind of question.

(263) Trial Examiner Spencer: I think it would be better procedure if you had exhausted his recollection as to any conversations he had regarding the Ray Eberly show, if he had.

Then if you want to refresh his recollection, all right. But if you insist on asking the question as it now stands, I will take the answer.

Mr. Kriger: Well, my point is that yesterday Mr. Gamble testified in so many words that such offer was made, and I think I have the right to ask the witness whether he ever made the offer.

Trial Examiner Spencer: All right, I will take the answer.

A. I don't remember.

Q. Well, did you or did you not? Will you state specifically whether he did or did not make the offer?

Mr. Garver: Objection.

Trial Examiner Spencer: Overruled.

A. I don't remember. I can't answer that.

Q. Now, at that time, Mr. Teagle, what was your position relative to the employment of your members by the Gamble Enterprises? A. We wanted to negotiate for

the purpose of employment of our local musicians in the theatre, the Palace Theatre.

Q. And at that time, had you ever asked that either the union or your members be paid for work which they did not perform? (264) A. No, sir.

Q. Or were not to perform?

Mr. Garver: Move the answer be stricken, and I object to the question.

Trial Examiner Spencer: Well, now, what is your objection, Mr. Garver?

Mr. Garver: It is not proper direct examination.

Mr. Rappaport: It is a leading question.

Mr. Garver: It is a leading question, incorporating practically all the issues in the case.

- Trial Examiner Spencer: Well, it may be sort of a categorical question and answer, I suppose, but we frequently have them. I don't think that is very prejudicial to anybody, if at all.

If you want to put it that way, I will take the answer.

Mr. Kriger: Would you answer the question? Well, I will rephrase it.

Q. (By Mr. Kriger) And at that time, Mr. Teagle, had you ever demanded of—

Trial Examiner: Will you keep the time specified?

Q. (By Mr. Kriger) Referring to the fall of 1947, at or about the time that the Ray Eberly show was here which was to be, I believe, in November of 1947, I will ask you whether or not at that time you had demanded of Gamble Enterprises that they pay the union or your members for work (265) which they were not to perform?

A. No, sir.

Q. Now, did you have any further negotiations with Mr. Gamble after November, 1947, after the Ray Eberly show—well, strike that.

Did you have any further negotiations with Mr. Gamble in 1947 or 1948? A. None that I can recall.

Q. And do you recall approximately when you next spoke to Mr. Gamble about this dispute?

Trial Examiner Spencer: Well, now, Mr. Teagle, I want to call attention to the allegation of the complaint, which mentions the month of February, 1949, "and at all times since."

You may be asking a lot of unnecessary questions here. There is no allegation that in the fall of 1947 anything was done, just for the sake of saving time.

Mr. Kriger: Yes, but there is evidence in the record that went in over objection, which I figure we are bound to controvert, whether or not it is—

Trial Examiner Spencer: Well, I am not going to exclude that, then, if that is your thought. If you want to review it, go right ahead. .

Q. (By Mr. Kriger) When was the first time after these incidents that you got together with Mr. Gamble, or he got together with you, to discuss this dispute, this controversy? (266) A. I believe in the first part of 1949.

Q. And do you recall what occurred at that time in the way of a meeting between you and Mr. Gamble? A. Mr. Gamble mentioned—

Trial Examiner Spencer: Now, before you go on to that, will you please try to get the place, get this thing localized a little bit better so we will have some idea where the conversation came about, who was present, and so forth?

Mr. Kriger: I think the point is well taken.

Q. (By Mr. Kriger) Where was the conversation held, Mr. Teagle? A. In my office, 518 Metropolitan Building, Akron, Ohio.

Q. And who was present? A. I believe just Mr. Gamble and myself.

Q. And do you recall about when that was? A. Possibly the first part of 1949.

Q. What month? A. That I couldn't tell you.

Q. Would you state what Mr. Gamble told you on that occasion? A. Mr. Gamble, I believe, mentioned to me that if we couldn't arrive at something, the matter would be taken to the National Labor Relations Board.

Q. Do you recall what your comment on that was?  
A. I don't recall, no.

Trial Examiner Spencer: Mr. Teagle, is all that you recall (267) out of that conference that Mr. Gamble said he was taking the case to the National Labor Relations Board, or suggested that he may do that? Is that all you can recall of that?

The Witness: That is all I can recall.

Trial Examiner Spencer: You don't recall what led up to that statement?

The Witness: No, I can't.

Q. (By Mr. Kriger) Well, did you have any further meetings with Mr. Gamble during the spring of 1949?

A. Well, Mr. Gamble came into the office several times. Sometimes he would just stay a minute or two and leave. I was busy, but I can't tell you the exact dates.

Q. Did you discuss with him the employment of your members? A. Some of the times.

Q. And I believe you finally had a meeting, did you not, on the 8th of May? Do you recall that meeting? A. Yes, we had a meeting some time in May, the early part of May. Possibly that was the date.

Q. Now, offering you the document identified as General Counsel's Exhibit 14, which is a letter from you to Mr. Gamble, referring to a meeting of the Executive Board of the Union which Mr. Gamble was invited to attend, do you recall whether Mr. Gamble appeared at that meeting?  
A. No, he did not.

Trial Examiner Spencer: Let me see that.

(268) Q. (By Mr. Kriger) Now, do you recall what the purpose of that meeting was for? What matters were to be considered by your Executive Board? A. He gave me to understand that he wanted to discuss with our Board and make some suggestions relative to the employment of musicians. And I sent him the letter, then, inviting him to appear.

Q. If you recall, what was the next communication that you received from Gamble Enterprises relative to the

dispute between your union and the company? A. Well, there have been so many communications I wouldn't know what the next communication would be.

Q. Perhaps for the purpose of refreshing your recollection, I will offer you General Counsel's Exhibit No. 15, and ask you what that is, whether that assists you in answering the question? A. Yes. We received a letter of this kind. This is a copy.

Q. You are referring to the communication from Mr. — A. Mr. Rappaport.

Q. From Mr. Rappaport.

Trial Examiner Spencer: May I see that?

Q. (By Mr. Kriger) What if anything did you do relative to a reply to Mr. Rappaport, or to further negotiations with the company? (269) A. I am quite sure I replied to the letter. Could I see that letter again, please?

I am quite sure I replied. I would probably recognize the letter if I could see it.

Q. Well, referring to General Counsel's Exhibit 16, I will ask you what then happened? A. Yes. I sent this letter to them, stating that our Executive Board would meet on May 1, 1949, at which time his letter would be given consideration.

Q. Was the letter considered at the meeting of the Executive Board on the 1st of May? A. Yes, sir.

Mr. Garver: Mr. Examiner, I want to move to strike this material with respect to this Executive Board of the Union unless he has the witness testify first as to what brought about that meeting, and what took place at it, and so forth, but this throwing isolated—

Trial Examiner Spencer: All right, let's get a little foundation.

Q. (By Mr. Kriger) Was the meeting held on the first of May, Mr. Teagle? A. Yes.

Q. And was the entire Executive Board there? A. Yes.

Q. And what was considered at that meeting? What matters (270) were discussed, if you recall? A. Mr. Rappaport's letter, and the Palace Theatre.



Q. And what action if any was taken at that meeting?

Mr. Garver: Excuse me; does the record show the letter being referred to now?

Trial Examiner Spencer: I think it was referred to by its exhibit number.

Mr. Kriger: Let the record show I was referring to Mr. Teagle's letter to Mr. Rappaport of April 26, 1949, identified as General Counsel's Exhibit No. 16.

Q. (By Mr. Kriger) Now, at the meeting of May 1st, what action, if any, was taken by the Executive Board?

Mr. Garver: That goes into the same thing I was objecting to, Mr. Examiner. How can we have the action, if we don't know the question that was presented?

Trial Examiner Spencer: I know what your idea is. I suppose that Mr. Kriger might develop through this witness everything that happened at the meeting, what was said, who said it, and so forth. It would give us a better, or more proper foundation for cross examination.

Q. (By Mr. Kriger) Well, Mr. Teagle, at the meeting of May 1st, I will ask you, whether or not you presented to the Executive Board Mr. Rappaport's letter of April 22, offering you General Counsel's Exhibit No. 15? A. Yes, I read this letter to the Executive Board.

(271) Q. And did the Board discuss the contents thereof? A. They discussed the contents of the letter.

Q. And did they discuss the position of the Union? A. The only thing I can say is that they discussed the case generally, or the contents of the letter.

Q. And did the Executive Board take any action at that meeting?

Mr. Garver: Objection.

Trial Examiner Spencer: Well, counsel, I understand your objection, and I don't say it is an improper objection. I think it is proper, but to expedite this hearing, I am going to take the answer, and suggest that you will have ample opportunity to cross examine to go into this meeting at such length as you wish. You may answer.

The Witness: Read the question, please?

(The reporter read the question.)

A. They advised me to reply to Mr. Rappaport, which I did, and the action that the Board took was that his letter would be referred to our Federation counsel for advice.

Q. You mean the Federation attorneys? A. That is right.

Trial Examiner Spencer: Well, enlighten me a little more on what the Federation counsel is.

Q. (By Mr. Kriger) Who are the Federation counsel? A. Well, they have several. I think Mr. Diamond heads the (272) firm, and Mr.—there is a firm of Van Arkle & Kaiser, Washington, D. C., and also represents the Federation.

Q. And did you subsequently receive any advice from the counsel for the Federation? A. Yes.

Trial Examiner Spencer: I suppose you mean did the local subsequently receive advice?

Q. (By Mr. Kriger) No, I mean, did you subsequently hear from counsel? A. Yes.

Q. Now, did you reply to Mr. Rappaport? A. Yes.

Q. What was the nature of your reply?

Mr. Garver: What was the reply?

Mr. Rappaport: I object to that, Mr. Hearing Officer, because the letters are all in evidence, and to ask the witness to repeat what is in a letter is highly improper.

Trial Examiner Spencer: No, we don't want that. If you are referring to a communication, Mr. Kriger, if it is not in evidence, if you have it, you can offer it.

Mr. Kriger: Well, I will withdraw that, then.

Q. (By Mr. Kriger) I will ask you specifically, Mr. Teagle, whether you later had a meeting with Mr. Rappaport?

Mr. Garver: Excuse me, just so the record and I may understand, did you mean to say that there was a reply (273) which is a letter in the record?

Mr. Kriger: It is not in here now. I don't think it is too pertinent, but I will put it in if you insist.

Mr. Garver: No, I am not insisting.

Trial Examiner Spencer: Go ahead with your examination, Mr. Kriger.

Q. (By Mr. Kriger) Mr. Teagle, did you subsequently have a meeting with Mr. Rappaport? A. Mr. Rappaport and the others.

Q. And where was that meeting held? A. In my office, in the Metropolitan Building, Room 518.

Q. And do you recall who was present? A. Mr. Rappaport, Mr. Ron Gamble, and his brother—I have forgotten his first name—

Mr. Garver: Was that Lou Gamble?

The Witness: I don't know his first name.

And our negotiating committee, myself, Mr. Light, and Mr. Dilley. I believe those are the ones who were present.

Q. (By Mr. Kriger) Now, on that occasion, what was the position of the union? A. Well, we made several suggestions relative to the employment of local musicians in the Palace Theatre, Akron, Ohio.

Mr. Garver: Mr. Examiner, I am embarrassed to have to interrupt counsel and to persist in perhaps burdening the Examiner with my comments, and I hesitate to do it—

(274) Trial Examiner Spencer: Well, now, counsel, within reason I am always willing to hear your objection, unless it appears to be an utter waste of time.

Mr. Garver: I am objecting again to this last question, because "what is the position of the union," without giving us anything as to what the issue was, what they were discussing, and then the next question follows up with further material which confuses this record, I believe.

Trial Examiner Spencer: I agree that it is preferable that if counsel is going into a conference, that he have the witness give his entire recollection of what happened at the conference.

Do you have some objection to proceeding that way, Mr. Kriger?

Mr. Kriger: No objection.

Trial Examiner Spencer: Very well. Let's develop that.

Q. (By Mr. Kriger) Well, would you state, Mr. Teagle, first, who was the spokesman for the company? A. Mr. Rappaport.

Q. And that is Mr. Rappaport that is seated at the counsel table as representative of the company here?

A. That is right.

Q. And who was the spokesman or spokesmen for the union? A. I believe the president of our local, Mr. Light.

Q. Now, would you tell just what happened, in your own words? (275) A. There were several suggestions made, both sides, and of course we suggested various matters relative to the employment of local musicians in the Palace Theatre.

Trial Examiner Spencer: Well, just tell us what you suggested; don't just say you made suggestions. That doesn't mean much to us. Tell us what your suggestions were?

The Witness: Well, we broke stage shows down—this is the argument we were giving them—

Trial Examiner Spencer: I want what you said at this meeting.

The Witness: That is right. We broke the stage shows down into a presentation band, a unit show, and then presentation band that possibly picks up their acts, to go into a theatre to play three or four dates and then are actually dismissed. Those three phases.

Q. (By Mr. Kriger) Now, before we get off that, would you explain what you mean by a "presentation" show? A. My interpretation of a presentation band or orchestra is an orchestra that comes into the theatre, puts on a show, without any acts.

Mr. Garver: That is usually a traveling band; is that what you mean?

The Witness: It wouldn't necessarily have to be traveling. A presentation band can be made of a traveling band or local musicians.

(276) Now, the unit show, my interpretation of a unit show is a traveling band that has been together for some time, for example like Sammy Kaye, which I believe

he has a horse act of some kind that has been with him for years and years.

And the other presentation band may be playing around in dance halls and get a chance for three or four theatre dates, and they may get a couple of acts out of Cleveland, one act out of Cincinnati, and as soon as the theatre dates are finished, the dates are laid off and the band then goes on and plays probably dance halls.

Q. Now, if I get you right, then, and correct me if I am wrong, there were three types of shows discussed?

A. That is right.

Q. There was the presentation show, which is a mere orchestra or band playing a concert.

There is the band which has the acts as a regular part, or as a permanent part of the organization, and number three, there is the band which usually is a dance band, and which picks up vaudeville acts temporarily for the purpose of one or more theatre engagements? A. That is correct.

Mr. Rappaport: We object to that question as absolutely leading, and as an attempt to repeat—

Trial Examiner Spencer: Well, it is a summation of the witness' testimony, as a matter of fact, but I don't see that (277) it is objectionable. It may remain.

It would be objectionable as a general practice, of course, but that is all right. Proceed.

Q. (By Mr. Kriger) Mr. Teagle, what suggestions did the union make on that occasion relative to the employment of your members?

Mr. Garver: Mr. Examiner, I thought he was going into what the suggestions were, in line with your instructions to the witness at the meeting, and then of course we got into a little more refinement of the particular terms, but it seems to me he ought to return to the—

Trial Examiner Spencer: All right, now, Mr. Teagle; you have given us the three types of performances that were discussed at this meeting. Now, will you proceed with what suggestions were made relative to these things at these meetings?



The Witness: Well, one of the suggestions was that we at least be permitted to play these shows that come in, where they pick up these acts for the time they are playing in the theatre engagements. That was one of the suggestions.

Trial Examiner Spencer: That is what you call the presentation band?

The Witness: That is one of the presentation bands.

Trial Examiner Spencer: Well, will you amplify that a bit? Precisely what was your suggestion? That the local (278) orchestra should play on the same program that the presentation band of this type played?

The Witness: Where they pick up the acts just for three or four weeks, yes, because we didn't consider it a unit show.

Q. (By Mr. Kriger) Now, what work did you suggest that your members perform? When there is a show which includes orchestra, with a number of vaudeville acts which are not a permanent part of the orchestra? A. Yes.

Mr. Garver: Mr. Examiner, we are again getting away from the description of what went on at that meeting. Of course, I realize that I am not cross examining, but before you can go into these refinements of positions, we ought to hear the background of that meeting, what it was, or what took place at that meeting.

Trial Examiner Spencer: Well, we can spend two or three days on this, or we can let counsel proceed in his normal style of examination. I think I will just say go ahead and proceed.

The Witness: What was the question?

(The reporter read the question.)

A. The suggestion we made was that we be permitted to play those acts.

Q. You mean play for the acts? A. That is right.

(279) Q. And would your members do any other work during the program? A. Well, they could. They could play the overture, they could play the—

Trial Examiner Spencer: I don't want to interrupt you, but I do want to get this answer as concise as pos-

sible. It is not what they might do; it is what you suggested at this meeting they should do.

The Witness: Well, we suggested that.

Trial Examiner Spencer: What?

The Witness: That they play these acts.

Trial Examiner Spencer: Did you suggest anything further relative to this particular type of engagement?

The Witness: No, not relative to that particular type of engagements.

Q. (By Mr. Kriger) Now, did you make any suggestions on that occasion as to any guarantee—

Trial Examiner Spencer: Mr. Kriger, let the witness tell us all the suggestions he made, without prompting.

Mr. Kriger: Withdraw that.

Trial Examiner Spencer: Now, just tell us everything that you put forward at that meeting, Mr. Teagle? You have named one thing; did you make other suggestions? Did you make any proposal relative to unit shows, the use of local musicians on occasions when there were unit shows?

(280) The Witness: Not that I recall.

Trial Examiner Spencer: You made no proposal.

The Witness: Not that—that is, me myself?

Trial Examiner Spencer: Well, did any spokesman for the union make proposals relative to the unit shows?

The Witness: Not that I recall.

Trial Examiner Spencer: Do you recall any further suggestions that were put forward by the union at this conference?

The Witness: Well, we suggested to them that we would like employment for our musicians during the period of the year, and another suggestion was—

Trial Examiner Spencer: Now, would you amplify that a little bit? What do you mean by during a period of a year?

The Witness: A calendar year.

Trial Examiner Spencer: I know, but I don't get your suggestion concretely.

The Witness: I see. We suggested that we be permitted to play half of the stage shows that come into the Palace. Is that what you mean?

Trial Examiner Spencer: I just want to get your meaning. I am trying to see—I would like to have your whole story of what the union proposed at this conference.

The Witness: That is one of the—two of the suggestions.

Trial Examiner Spencer: Can you think of anything further?

(281) The Witness: Do you want me to tell what they said?

Trial Examiner Spencer: I would like to get your proposals, first.

The Witness: I think, Mr. Light, the president, made some proposals, but I would prefer to have him testify.

Trial Examiner Spencer: Is he here available to you, Mr. Kriger?

Mr. Kriger: Yes.

Trial Examiner Spencer: All right. Excuse me for interrupting you, but I do want to try to get this record into a shape that is definite so far as possible.

Q. (By Mr. Kriger) Now, what was the company's position, as stated by the company's representatives at that time? A. The spokesman, Mr. Rappaport, stated that they were not in position to guarantee us anything, and he said, "We will make an offer." He dictated a letter to me—I don't take shorthand, but I typed it on the machine, and he had me read it over and I said to Mr. Rappaport, "Is this an agreement?"

And he said, "No, this is only an offer that we are making, so that you will understand what we are offering the local union."

I said to Mr. Dilley, a member of our negotiating committee, who happens to be an attorney, "Should I initial this?", and he said, "Inasmuch as it is not an agreement, I see no harm in it." So I initialed it and Mr. Rappaport initialed it.

(282) Q. And are you referring to the memorandum which is entitled General Counsel's Exhibit No. 17? A. Yes, sir.

Q. And at that time, what was the understanding between the parties who were present as to the status of this memorandum?

Mr. Rappaport: We object to that as calling for a conclusion which the hearing members will have to decide what the understanding was.

Trial Examiner Spencer: I think the objection is well taken. Sustained.

Q. (By Mr. Kriger) Now, at that time, what was your understanding, Mr. Teagle, as to—

Mr. Rappaport: Objection to that.

Q. (Continuing) —as to this memorandum?

Trial Examiner Spencer: Well, hasn't he just stated it?

Mr. Kriger: Not clearly, perhaps.

Trial Examiner Spencer: I think we should get at those facts about what was said, and not the subjective state of the mind of somebody. We have the memo, and I don't see why you can't develop this by what took place at that meeting, what was said.

Q. (By Mr. Kriger) What else did Mr. Rappaport say, if anything, relative to the memorandum dated May 8, 1949, referring to General Counsel's Exhibit No. 17? (283) A. As I recall, he said, "This is our offer; that is all we can do in the matter at this time."

Q. Now, what did you say, what was your comment, or the comment of any other member of the union committee, other than what you have stated? A. Well, we desired to negotiate further in the matter. I believe I wrote Mr. Rappaport a letter to that effect later on, if I am not mistaken.

Q. Now, I will ask you, after the meeting of May 8th, what then occurred? Specifically, what action if anything did your Executive Board take relative to the memorandum dated May 8, 1949? A. We reported to the Executive

Board that we were unable to reach any agreement with the Palace Theatre Company. That is, Gamble Enterprises.

Mr. Garver: I would like to hear the answer. I didn't understand it.

(The reporter read the answer.)

Q. (By Mr. Kriger) Now, referring to the document which is a letter dated May 12th, entitled General Counsel's Exhibit No. 18, for the purpose of refreshing your recollection, I will ask you what action then was taken?

A. The Board decided to refer the entire subject matter to our Federation attorneys for advice, Messrs. Van Arkle & Kaiser.

(284) Q. And then did you have any further meetings with Mr. Gamble or Mr. Rappaport during the summer of 1949? A. None that I can recall.

Q. I believe you did have an exchange of correspondence? A. Yes.

Q. Now, do you recall about when the Roy Acuff show was arranged for? A. I don't quite recall, but the date would be on the contract.

Q. When was the first time you saw the contract, Mr. Teagle? Offering you Respondent's Exhibit 3. A. Mr. Gamble brought this contract to me.

Q. And do you recall about when that was? A. About the first part of August, 1949. He came to the office and gave me the contract, and I handed the contract back to him, because the booking agent had not affixed his signature, where it says, "Representative of employee."

Then I think later on the contract was mailed to our office.

Q. Well, prior to that time had you received any communication from Mr. Gamble as to his intentions on booking traveling bands? A. I don't believe so. I don't recall any.

Q. Offering you a letter designated as General Counsel's Exhibit 20, dated June 24, I will ask you whether or not that helps you to answer the question? A. Yes, I remember this communication.



(285) Q. Did Mr. Gamble have any discussion with you relative to the same, in addition? A. Not that I remember.

Q. Now, did Mr. Gamble ever contact you subsequent to June 24, 1949, and prior to December, 1949, relative to entering into a contract for the employment of your people? A. I believe you called me one day and stated that—

Q. Well, I mean before the incident in December. Withdraw the question.

In the summer of 1949, after you received the letter of June 24th, did Mr. Gamble contact you for the purpose of entering into an agreement for the employment of your local people? A. Not that I can remember.

Mr. Garver: Objection.

Trial Examiner Spencer: Overruled.

Q. (By Mr. Kriger) Now, you state that Mr. Gamble brought into you the Roy Acuff contract, and it was not properly signed? A. That is right.

Q. Where did you receive this copy of the Roy Acuff agreement? A. Mr. Gamble first gave it to me in my office.

Q. And you gave it back to Mr. Gamble? A. Because the booking agent's signature was not on it.

(286) Q. And then when he took it back, then later when or where did you receive that copy? A. Later on, I received it through the mail, then. Mr. Gamble took it back.

Mr. Kriger: Mark this, please.

(Thereupon, the document above-referred to was marked Respondent's Exhibit No. 13 for identification.)

Q. (By Mr. Kriger) Offering you a letter dated August 3, 1949, to you from Mr. Joe Hiller, of the Joe Hiller Agency, I ask you to state there whether that purports to be that letter? A. Yes.

Q. Did you receive that letter from Mr. Hiller? A. Yes, with the contract.

Q. And did that accompany the contract relative to Roy Acuff? A. Yes, sir.

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Trial Examiner Spencer: Let counsel see it.

Mr. Garver: Has this document been marked, yet?

Mr. Kriger: About to offer it.

Mr. Garver: But you have it marked as Respondent's Exhibit 13 for identification?

Mr. Kriger: Yes. I offer Respondent's Exhibit 13.

Mr. Garver: No objection.

Trial Examiner Spencer: Received.

(287) (The document heretofore marked Respondent's Exhibit No. 13 for identification, was received in evidence.)

Q. (By Mr. Kriger) Now, did you subsequently have any conversations with Mr. Hiller? A. No, I don't believe so. I think I received a phone call from the manager of Acuff's band, hillbilly band.

Q. And what was the substance of that phone conversation, referring to Mr. Frank? A. He asked me whether or not we had reached an agreement with the Palace Theatre, and whether or not it would be all right for Roy Acuff's orchestra to come in there on a certain date for, I believe, four days. I told him that I had not—we had not consummated an agreement with the Palace Theatre.

The same day then, shortly after the phone call, possibly two hours later, I received a wire from the same man who had previously called me, asking me practically the same thing in the wire as he did over the telephone.

Q. And what did you advise him? A. I advised him by wire that we had not consummated an agreement with the Palace Theatre.

Q. Now, did you have any further conversations with Mr. Gamble relative to the Roy Acuff show? A. Not relative to the Roy Acuff show.

Q. What was the next contact which Mr. Gamble made with you (288) after that? A. I believe you called me, and mentioned that a Mr. Belkin had called your office and wanted to know whether it would be all right for him and you and I to meet, relative to the Palace Theatre case, and I told you at the time it would be perfectly satisfactory.

Q. And did you have such a meeting? A. Yes, I believe it was on some Sunday morning.

Q. And do you recall the approximate date? A. The first, I believe, was in January of this year, or the latter part of December, I am not sure.

Q. And where was the meeting held? A. In my office at 518 Metropolitan Building, Akron.

Q. And do you recall who was present? A. You were present, Mr. Belkin, myself, and Ron Gamble. Ron Gamble, and I believe Mr. Light was there.

Q. What was Mr. Gamble's proposition, if any, at that time?

Mr. Rappaport: Now, we object to that, as calling for a conclusion. He can ask him what he said. Whether it was a proposition, the court will have to determine.

Trial Examiner Spencer: All right. What did Mr. Gamble say, if anything, at this meeting? A. Well, Mr. Gamble was about an hour late for the meeting, and we had to call him and get him down there.

(289) Trial Examiner Spencer: Well, now, just answer the question. What did Mr. Gamble say, if anything, at the meeting?

The Witness: He mentioned that he could possibly get a show, a vaudeville show that was playing in Youngstown, Ohio, and could probably bring it into the Palace Theatre, but the time was short, and he would have to know quickly.

So we discussed the matter and reached a tentative agreement whereby he could bring in this show; he would employ our local musicians for the first show, and he asked if he could bring in another show without employing our musicians, and he told us he would bring in both shows within a period of 60 days.

Of course, it was optional with him whether or not he would bring in the second show.

We agreed to that, and told him that we would make up a contract to that effect.

Mr. Gamble said, "Well, hold it until—hold it in abeyance, and I will let you know not later than Tuesday."

Well, then, I didn't hear from Mr. Gamble, but I did hear from you. I don't know who informed you—stating that the deal was off.

Q. Now, for how long a time, if you recall, was the agreement to be operative? A. Two months.

(290) Q. And what if anything were the parties to do after the expiration of the two-month period? A. We were to negotiate then, again, after the expiration of the two-month period, and—did you raise an objection? Pardon me.

Q. So what if anything was said relative to the pending NLRB case? A. Well, it was agreed by—

Mr. Rappaport: Move to strike that answer out right there.

Trial Examiner Spencer: All right. Just what was said?

The Witness: It was agreed—

Trial Examiner Spencer: No, no.

The Witness: All right. It was said, then, that the NLRB case would not be heard during this two-month period.

Trial Examiner Spencer: Who said that?

The Witness: Mr. Gamble.

Q. (By Mr. Kriger) And what arrangements, if any, were made to that effect at that time?

Mr. Rappaport: By whom?

Mr. Kriger: We will testify.

Mr. Rappaport: We object to that. That is calling for a conclusion that there were arrangements made.

A. I don't know.

Trial Examiner Spencer: The witness has answered that (291) he doesn't know what arrangements were made.

Q. (By Mr. Kriger) Now, since then have you had any negotiations with Mr. Gamble? A. None.

Q. Has Mr. Gamble ever contacted you? A. No.

Q. Now, during the period from the first of 1949 to the present date, have you ever demanded of this company that it pay the union or the employees for work which was not performed, or is not to be performed? A. No, sir.

Q. And what is now the position of the union relative to its relationship with Gamble Enterprises?

Mr. Garver: Objection.

Trial Examiner Spencer: Sustained.

Q. (By Mr. Kriger) One point I would like to clear up, Mr. Teagle: To your knowledge, do you have the authority to stop an out-of-town band from playing here in Akron?

Mr. Rappaport: We object to that as calling entirely for a conclusion as to whether he has or has not such authority.

Mr. Kriger: It is not a conclusion. I am asking him—

Trial Examiner Spencer: Well, I think we might very well explore the scope of the local authority. I think you might frame your question in a more acceptable manner.

Q. (By Mr. Kriger) Are you familiar with the duties and powers (292) of the secretary and the business representative of your local union? A. Yes.

Q. Under the International's constitution? A. Yes.

Q. And will you state what some of those duties are?

Trial Examiner Spencer: Are they defined by the constitution?

Mr. Kriger: They are defined.

Trial Examiner Spencer: And the constitution is in there?

Mr. Kriger: The constitution is in there.

Trial Examiner Spencer: Then it isn't necessary. Isn't it sufficient that you just refer the Examiner to the constitution?

Take a recess.

(Short recess.)

Trial Examiner Spencer: All right; proceed.

Q. (By Mr. Kriger) Mr. Teagle, you have examined General Counsel's Exhibit No. 23? A. I would say that Section 1-H of Article 1, on Page 20, would possibly apply.

Q. Referring to the section of General Counsel's Exhibit 23, I will ask you whether there is anything in there that—



Trial Examiner Spencer: Well, the constitution is in there, Mr. Kriger; you are a lawyer and you know what the (293) constitution is. You can refer to it in your argument or brief. It is not necessary to have it read into the record.

I think it would be a pertinent inquiry as to whether or not this local union which was named as Respondent took any action whatever with reference to this theatre employing name bands. If you want to pursue that line of inquiry, I think that would be fitting. We are interested in what they did.

Q. (By Mr. Kriger) Well, Mr. Teagle, you are secretary, of course, of the local union— A. No. 24.

Q. Does the local union hold meetings from time to time? A. Yes.

Q. And at those meetings, had the local union at any time taken any official position relative to the employment of bands by the Palace Theatre? A. Can you be more specific? State whether local or traveling bands?

Q. Well, has this matter been discussed at the meetings of the local union?

Mr. Rappaport: I am going to object to that as being wholly repetitious. He has testified to that over and over again, if I understand the question correctly.

Trial Examiner Spencer: Are you opening up something that you have heretofore—

(294) Mr. Kriger: Well, that is just preliminary.

Trial Examiner Spencer: Well, you can make it more specific. Are you referring to the employment by the local theatre of name bands?

Q. (By Mr. Kriger) Had the local union ever taken any official action relative to the employment by the Palace Theatre of local bands, local musicians?

Mr. Rappaport: Now, we object to that as calling entirely for a conclusion which the hearing members will have to determine, whether they did or did not. He has recited what has happened at these meetings. He can do that, but if anything else happened, whether they took a position or not is wholly for the hearing member to determine.

Trial Examiner Spencer: The question is just too vague, in my opinion, to get an answer that enlightens.

Mr. Kriger: I suggest we adjourn over the noon hour, Mr. Examiner. I would like to enlighten myself.

Trial Examiner Spencer: We can discuss this off the record.

(Discussion off the record.)

Trial Examiner Spencer: We will adjourn until 1:00 o'clock.

(Whereupon, a recess was taken until 1:00 o'clock p. m.)

(295) After recess.

(Whereupon, the hearing was resumed, pursuant to the taking of the recess, at 1:00 o'clock, p.m.)

Trial Examiner Spencer: On the record.

Mr. Kriger: In view of the prior state of the record, the prior questions, I want the record to show that it is our position that the General Counsel bears the burden of proof as to what happens, and we don't have to prove what didn't happen, and therefore, I don't think it is pertinent to go into what may or may not have happened.

Trial Examiner Spencer: That is a matter for your discretion, Mr. Kriger.

So you have finished with your direct examination of this witness?

Mr. Kriger: That is right.

Mr. Garver: I don't believe I have any questions of Mr. Teagle.

Trial Examiner Spencer: Mr. Rappaport, do you have any questions?

Mr. Rappaport: Yes, I want to ask a few questions.

#### CROSS EXAMINATION.

Q. (By Mr. Rappaport) Mr. Teagle, the members of traveling bands that have either played or been engaged at the Palace Theatre have all been members and were

at the time members of the American Federation of Musicians, were they not?

(296) Mr. Kriger: Object to that; I don't see the pertinency of it.

Trial Examiner Spencer: You may answer.

A. I wouldn't know, unless I checked their membership cards.

Q. Well, now, Mr. Teagle, you know whether or not they were or were not members, and you wouldn't have allowed them to play under any circumstances if they were not members, would you?

Mr. Kriger: Will you show a continuing objection to this line of testimony?

Trial Examiner Spencer: Yes, you have a double-barrelled question, Mr. Rappaport.

Mr. Rappaport: Well, let me rephrase it.

Q. (By Mr. Rappaport) You would not have allowed anybody to play in that theatre that wasn't a member of the American Federation of Musicians, would you?

Mr. Kriger: I would like to show another objection, for the reason that that matter is not even covered by the complaint.

Trial Examiner Spencer: Overruled, you may answer.

The Witness: Repeat the question, please?

(The reporter read the question.)

A. The local leader of an orchestra usually checks the cards. I didn't check the cards.

Q. You haven't answered my question. Will you answer the (297) question, please?

Trial Examiner Spencer: Will you read the question, please?

(The reporter read the question.)

A. I would have no authority to stop them.

Q. Would your union permit non-union members to play in that theatre? A. Are you talking about the local union?

Q. Yes.

Mr. Kriger: I object to that.

Trial Examiner Spencer: You have a continuing objection.

Mr. Kriger: This is a specific objection to the specific question. I object specifically to the use of the word "permit" without any clarification.

Trial Examiner Spencer: Well, this is cross examination. I think the question is all right for cross examination. You may answer.

The Witness: Repeat it, please, will you?

(The reporter read the question.)

The Witness: They could work in the theatre, yes, non-union musicians. Of course, we could enter a protest.

Q. And would your union work in that theatre when non-union men were working there?

Trial Examiner Spencer: Now, when you say "your union" you are referring to the local, I take it?

(298) Mr. Rappaport: Yes.

A. That is a matter for the local union musician, each individual to decide.

Q. You mean an individual member of the local, who is a member of the union, could either decide to play or not to play, if there were non-union musicians employed in that theatre? A. That would be his individual right to do what he pleases.

Q. And he would not suffer any punishment on behalf of the local if he played? A. That I don't know. I can't speak for the—

Q. Well, you are familiar with your rules, aren't you? A. I can't speak for the trial or executive board.

Q. Don't your rules provide that they shall not play with non-union musicians? A. The rules provide that, yes.

Q. And doesn't your union enforce those rules? A. We do to the best of our ability, but sometimes they violate those laws.

Q. And then they are punished, aren't they, when it is discovered? A. They are brought in and given a trial.

Sometimes the Board punishes, and sometimes they don't. It all depends upon the circumstances.

Q. Now, I think you testified that your authority was very (299) limited. Is that right? As a business agent, I mean. Is that correct? A. My authority is limited, yes.

Q. Now, I think you said you have no right to make contracts? A. I don't remember of stating that.

Q. Well, do you or do you not have the right to make contracts? A. I can assist a local leader to make a contract if he so desires, although there are several leaders that make their own contracts.

Q. I didn't ask you about local leaders. I am asking you whether you as the business agent can make a contract with an organization like Gamble Enterprises? A. Pertaining to what?

Q. Pertaining to employment of musicians in that theatre. A. No, I wouldn't have the authority.

Q. And neither does your president have such authority? A. No.

Q. And neither you and the president together have that authority; is that right? A. That is right.

Q. Yet you testified that you and Mr. Light had made an agreement with Mr. Gamble for the employment of your musicians for a vaudeville show, and granted him permission to bring in a stage band if he employed your musicians for that one show.

(300) Mr. Kriger: I object to that. He didn't so testify:

Mr. Rappaport: That is my recollection. If he didn't, he can say so.

Trial Examiner Spencer: Well, his testimony is all on the record. Is there any advantage to have it repeated, Mr. Rappaport?

Mr. Rappaport: Yes, he has shown or attempted to show that he had very little authority, and yet they place a good deal of stress on an alleged agreement.

Trial Examiner Spencer: I take your question to be an argument. It is overruled.



Q. (By Mr. Rappaport) Do you know how long this rule contained in Article 18, Section 4, of the Federation's Constitution has been in existence, which provides that except with the consent of a local, a traveling band shall not play in a theatre unless a local orchestra is employed?

A. Do I know how long it has been in effect?

Q. Yes. A. No. Not exactly.

Q. Has it been in effect all the time that you have been the business agent? A. I couldn't answer that.

Q. Has it been in effect the last five years? A. I would have to refer to it in the annual bylaws books before I could answer that.

(301) Q. You know it was in effect in 1945, don't you? A. No, I don't.

Q. You do not? A. I would have to refer to the 1945 book.

Q. What was the basis, then, for your demanding, in 1945 and '46, for employment of local musicians whenever a stage band was brought in?

Mr. Kriger: Objection. There is no evidence to that effect.

Mr. Rappaport: I didn't say there was. I asked him what the basis was for their demand that a local band be employed whenever a stage show was—

Trial Examiner Spencer: Well, this witness testified that there was such a demand, Mr. Rappaport?

Mr. Rappaport: I think so. I think both he and Mr. Houser did.

Trial Examiner Spencer: Do you recall what you testified to that effect, Mr. Witness?

The Witness: No, I don't recall that I testified to that effect, that there was a demand made.

Q. (By Mr. Rappaport) Well, I will ask you, then, how did it happen that a band was either employed or paid in '45, '46, and '47 wherever a traveling stage band appeared?

Mr. Kriger: I object to that. That calls for a conclusion.

(302) Mr. Rappaport: I am cross examining him. He is not my witness.

Trial Examiner Spencer: Do you understand the question, Mr. Witness?

The Witness: Repeat the question.

(The reporter read the question.)

A. I don't know.

Q. You have no knowledge of that at all? A. No. We have no contract with the house.

Q. I will ask you specifically whether that wasn't the position of the union because of the existence of Article 18, Section 4 of the Constitution of the American Federation of Musicians?

Mr. Kriger: Objection.

Trial Examiner Spencer: Overruled.

A. I don't know.

Q. Now, you had notice of the Acuff engagement?

A. I believe we received a contract, yes.

Q. Prior to the engagement itself? A. Yes, sir.

Q. And did you communicate with the International after you learned that that band had been employed? A. Not to my knowledge.

Q. You mean to say that you didn't notify them that you either gave or withheld consent to their playing at the Palace Theatre? (303) A. Not to my knowledge, no.

Q. No communication whatsoever passed from you to the International? So that so far as you know, Mr. Petrillo acted out of a clear sky, without any contact with your local; is that right? A. I don't know any contact that he made with this local, no.

Q. Or you with him? A. That is right.

Q. You gave him no information on the subject at all?

A. Not that I know of.

Q. You could have, under that bylaw of the American Federation of Musicians, notified the International that you consented to the Acuff show appearing, could you not?

Mr. Kriger: I object to that, what he could have done.

Trial Examiner Spencer: Oh, I think the cross examination question is all right.

A. No, I would have no authority in a matter of that kind.

Q. Well, then, if you didn't, your union has a right, under that section, did it not, to consent to the appearance of that band without the employment of the local orchestra? A. You mean the local union?

Q. Yes.

The Witness: Read the question again, please?

(The reporter read the question.)

(304) A. No.

Q. I want you to read Section 4 of Article 18 of General Counsel's Exhibit No. 23. A. "Traveling members cannot, without the consent of a local—"

Q. I didn't ask you to read it out loud.

After having read that, do you still say that the local could not consent to the appearance of the Acuff band at the Palace Theatre if the local gave consent?

Mr. Kriger: I object to that. I think the exhibit speaks for itself.

Trial Examiner Spencer: Overruled.

A. Not the way I interpret the law.

Q. In other words, you could ignore this? A. I say, the way I interpret the law, the local wouldn't have the right.

Q. You what? A. I say, the way I interpret the law.

Q. The way you interpret the law what? What is your answer?

The Witness: Read the question.

(The reporter read the question.)

A. The way I interpret the law, no, they couldn't consent.

Q. What law are you referring to? The so-called Taft-Hartley Law, or the American Federation of Musicians Law, when you say "the law"? A. The one you showed me in the book.

(305) Q. The American Federation of Musicians? A. That is right.

Q. So you say that in spite of the language in here, that your local could not consent to the appearance of that orchestra on the stage without a local orchestra being employed? A. The question is not clear to me.

Mr. Rappaport: Read it to him again, please.

(The reporter read the record.)

Trial Examiner Spencer: Do you understand it now, Mr. Teagle?

The Witness: Very ambiguous.

Trial Examiner Spencer: I think you had better re-frame it.

Q. (By Mr. Rappaport) As you interpret the American Federation of Musicians Law, do you say that your Local No. 24 could not have consented to the appearance of the Acuff Orchestra on the Palace Theatre stage without employing a local orchestra?

Trial Examiner Spencer: Under the question he wants to know the authority of the local to consent to the employment of the name band, where you have no employment of a local orchestra.

A. I would say the local would have no authority to consent.

Q. Let me show you General Counsel's Exhibit No. 22. Now, that is a letter from James Petrillo to Charles E. Hogan, which among other things, the writer says, "The local there (306) advises us that no agreement has been reached between this theatre and our local union." A. I know nothing of that letter.

Q: I haven't asked the question, yet.

Does that refresh your recollection so that you want to change your testimony that you did advise the International about the Acuff engagement, and your objections to their appearing? A. Not to my knowledge did I advise them, no.

Q. So you don't know how Mr. Petrillo happened to write such a thing as that? A. No.

Q. Who carries on the correspondence with the International? Don't you do that? A. Yes.

Q. And you never wrote any such letter as he refers to? A. Not that I can remember, no.

Q. Now, you testified this morning that after I had requested an appointment with you and representatives of your organization, your local held a meeting on May 1st, and you stated that your local decided to refer the matter to the counsel for the American Federation. A. I believe I said the Local Board.

Q. Well, the Local Board referred it to the counsel. Did you ever so advise me, prior to the meeting on May 8th? (307) A. Prior to the meeting?

Q. Yes. A. Advise you what?

Q. That your local, or your Executive Board, had decided to refer the matter to the counsel of the American Federation of Musicians? A. I believe I sent you a letter to that effect.

Q. I will show you General Counsel's Exhibit No. 18, and ask you whether that is the letter you refer to that you wrote me? A. Yes, sir.

Q. All right. What is the date of that letter? A. May 12th.

Q. So that was not before the meeting of May 8th that you advised me, then, was it? A. Well, I can't remember all these dates.

Q. Here is the letter. Doesn't this letter say that at your meeting on the 11th of May your Executive Board decided to refer the matter to the counsel for the American Federation of Musicians? A. Yes, that is after we had the meeting; that is right.

Q. Then you are mistaken, are you not, in your statement that your meeting of May 1st decided to refer the matter to the counsel for the American Federation of Musicians? A. Well, I can't remember those dates. That is impossible.

(308) Q. I am asking you now whether you didn't make a mistake in your testimony. A. Well, I could have, on the date, yes.



Q. And you are also mistaken, when you said just a moment ago that you notified me prior to May 8th that this matter had been referred to these attorneys? A. Well, I notified you after the meeting. That is right. It wasn't done intentionally; I got mixed up on the dates.

Q. I didn't say that there was any intention on your part. I am asking you to correct your testimony.

Mr. Rappaport: That is all.

Mr. Garver: That is all.

Trial Examiner Spencer: If there is nothing further, you are excused, Mr. Teagle. (Witness excused.)

Mr. Kriger: Take the stand, Mr. Light.

REGINALD LIGHT, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION.

Q. (By Mr. Kriger) Would you state your name, please? A. Reginald Light.

Q. And your address, Mr. Light? A. 78 Linwood Road.

Q. And do you hold any position in the American Federation (309) of Musicians, Local No. 24? A. I do.

Q. And what position is that? A. President.

Q. How long have you been president? A. Approximately nine years.

Q. Now, what is your business or profession? A. Musician.

Q. And I will ask you whether or not, as a musician, you once were a member of the orchestra at the Palace Theatre? A. I was, sir.

Q. How long were you a member of that orchestra? A. I first started at the Palace Theatre approximately 1934, and continued in the service there up to the last that the orchestra was employed.

Q. And do you remember approximately when that was? A. Well, it has been two or three years, I would say. A couple of years.

Q. The record shows that the services of the orchestra were terminated on the 2nd of July, I believe, was the last date. The 2nd of July, 1947.

Mr. Garver: Mr. Examiner, I am going to refrain from objections as much as possible, naturally. However, the record does not show that the services of the orchestra were terminated; that is exactly what it doesn't show. It merely (310) shows that July 2, 1947, or whatever that date is, was the last time that there was payment made to the group of nine people.

Mr. Kriger: I assume that constitutes an objection?

Mr. Garver: Certainly it is an objection to the form of the question.

Trial Examiner Spencer: All right. You stand corrected, Mr. Kriger.

Mr. Kriger: I think we understand each other.

Trial Examiner Spencer: I think counsel is correct. That is the last payment, is it not? The item that you refer to was the last payment made?

Mr. Kriger: Yes, I think our difference of opinion is what constitutes services. That is the matter of argument.

Trial Examiner Spencer: Well, let's proceed.

Q. (By Mr. Kriger) At what time was the Palace Theatre orchestra disbanded, Mr. Light? A. Well, I would say it was disbanded after this date of July 2, 1947.

Q. And were you a member of the orchestra at that time? A. I was.

Q. What instrument or instruments did you play?

A. I played drums and tympani in theatre work for many years.

Q. Now, during the period that the orchestra was in existence, in other words, prior to July 2, 1947, what type (311) of work did the orchestra do at the Palace Theatre?

A. We do—

Mr. Kriger: Prior to July 2, 1947.

Trial Examiner Spencer: Covering the whole performance?

Mr. Rappaport: That is what I want to know. It goes back to 1934.

Trial Examiner Spencer: Well, it is a little general.

Mr. Kriger: Well, we will start initially, then.

Q. (By Mr. Kriger) when did you first become a member of the Palace Theatre Orchestra? A. In approximately 1934.

Q. And at that time, would you state what type of work the Palace Theatre orchestra did?

Mr. Rappaport: We object to that as being wholly immaterial and having no bearing on the issues in this case.

Trial Examiner Spencer: Well, I suppose if the General Counsel's case goes into the background, I presume that the Respondents can do likewise. Overruled.

A. Our work consisted, during that time, of playing in the pit, a pit orchestra, playing for acts upon the stage.

Q. And what type of acts were presented on the stage at that time? A. All type of acts.

Q. About what time, if you are able to state, did the so-called traveling band make its appearance? (312) A. It probably played its initial appearance along about that time.

Q. And on the occasions that the traveling bands played at the Palace Theatre, what services were performed by the Palace Theatre Orchestra? A. We always played the balance of the acts, and sometimes augmented the orchestra that was traveling.

Q. Did the Palace Theatre Orchestra play at any time on the stage? A. We did.

Q. And would you describe the nature of the performance on those occasions, when you played on the stage? A. There was a time when the Palace Theatre Orchestra was placed on the stage to do presentation work, the only difference being that we were on the stage instead of in the pit, which probably made a more attractive appearance to the public at that time.

Q. About how long did your band actually work on the occasions of the visits by the traveling band? A. I don't quite understand.

Q. Well, strike that. I will rephrase the question: About what time, to the best of your recollection, did the practice start of your orchestra not playing on the occasions of the visits of the traveling band? A. If I understand you correctly, you mean approximately (313) what time did the traveling unit shows come through, when the house orchestra did not work? Is that what you mean?

Q. That is right. A. Well, that is probably just an estimation on my part, but roughly I would say somewhere in the neighborhood of 1940 to 1942.

Q. Now, during the period since then, up until July 2, 1947, on the occasions when a traveling band was scheduled for appearance at the Palace Theatre, what was the procedure relative to determining whether or not your services would be required? A. Well, we really had no way of knowing until the band was in. Sometimes they would use us; sometimes they didn't.

Mr. Garver: Mr. Examiner, I don't want to be left in the position of having to pick this subject up too extensively by cross examination. There has been no showing in this record yet that from 1942 on there was any actual performance by the local orchestra, with the exception of those few days, as has been explained—remember those three days?

It seems to me the background of whether or not there was any decision made as to the employment of local orchestras during those periods, and any practice that went on should first be preceded by a showing as to whether, from 1942 on, according to this witness, when the traveling bands were starting to come in, the local orchestra actually played. (314) There has been no showing by this witness or by anybody else that from that day forward there was any further general use of the local orchestra.

Trial Examiner Spencer: I think we had best let Mr. Kriger proceed in his own manner. You can take that up on cross examination, and if you don't want to amplify it, we will just have to let that stay.

Q. (By Mr. Kriger) Now, when did you know, Mr. Light, whether your services would be required or not?

Trial Examiner Spencer: You are referring now to the period subsequent to 1942?

Mr. Kriger: That is right.

Trial Examiner Spencer: The entire period from 1942 to July, 1947?

The Witness: I couldn't hear the question.

Q. (By Mr. Kriger) Well, first, what was the practice at about 1942, when the traveling bands started to make their appearance? A. The practice was we never knew exactly what type of show was coming in. Therefore, we couldn't determine whether we were going to be working or whether we weren't. Sometimes a show would come in, and there is a possibility that we would play half of the show. There were that type of show. Say, for instance, like the Marcus show was one in particular that we worked one half of the show. They carried musicians (315) that worked another part of the show. That was the situation at that time.

Q. And who would advise you what your duties were to be on the particular show?

Mr. Garver: There has been no showing of any particular show at which they were ever advised of anything.

Trial Examiner Spencer: Well, he just mentioned the Marcus show. He may answer.

The Witness: The question, please?

(The reporter read the question.)

A. The leader.

Q. Was that Mr. Houser? A. Mr. Houser, or the leader of the show, whatever.

Q. And on what occasion would such advice be given to you?

Trial Examiner Spencer: You mean—

Mr. Kriger: Do you understand that?

The Witness: No, not quite clear.

Mr. Kriger: Well, strike the question.

Q. (By Mr. Kriger) Did you hold rehearsals? A. Oh, yes.



Q. And how frequent were such rehearsals held?

A. Well, rehearsals were held every week. If there were two shows a week, there were two.

Q. And how far ahead of the show would the rehearsal be held? (316) A. The rehearsal was usually held on the morning of the first show.

Q. And at that time, what if any instructions were given to you? A. That is when we received our instructions.

Q. And instructions relative to what? A. To whatever was to be done in our line of duty.

Q. You mean relative to whether you were to play? A. Whether we were to play, or what type we were supposed to do.

Q. And supposing you were not to play? When were you advised? A. Then.

Q. Now, you mentioned the Marcus show, in which you participated in the actual performance. Were there any others which you participated in the performance? A. There were others. Right offhand I can't recall names.

Q. And, are you able to state what other types of services you rendered, if any, on the occasions that you participated in the show? A. My services were strictly as a professional drummer for theatre work.

Q. No, but I mean what type of work did you play? What was the extent of your participation in the performance?

Trial Examiner Spencer: You don't mean the witness personally, but you mean the local band?

(317) Mr. Kriger: I mean the orchestra; I am sorry.

A. Well, let me have that again. I am not quite clear on that.

Q. What was the extent of the participation in the performance? In other words, what did the orchestra do on those occasions when it didn't play? A. Well, say for instance, they carried a small group with the show; they were working a scene, we in the pit would play the show while they were back getting made up, or set up, or whatever was to be required for that particular show.

We handled the show while they went downstairs, as they say, and up backstage to prepare for that part of the performance.

Q. You mean during the shifting of scenery? A. No, it wouldn't even be that; the show would be going on, but they would be a part of the second part of the show, you might say, while they were preparing for that, we were handling the rest of the show.

Q. Now, on those occasions, and referring both to the period from 1942 on, and particularly the period covered by the performance shown on General Counsel's Exhibit 5, which I hand you, on the occasions when you did not actually participate in the performance at the theatre, are you able to state whether or not you held rehearsals prior to those performances? A. Yes.

Q. And when were the rehearsals held? (318) A. We rehearsed continually every week.

Q. Now, on those occasions, when Mr. Houser advised you that you were not to appear at the theatre, were you engaged in any other work? A. No.

Mr. Rappaport: What do you mean? Are you referring to this witness? Or are you referring to the whole orchestra?

Mr. Kriger: I am referring to this witness. That is all he knows.

Mr. Rappaport: Okay.

Q. (By Mr. Kriger) On the occasions on which you did not play—

Mr. Garver: Well, you are handing him G. C. No. 5. Are there any occasions on there when he did play?

Mr. Kriger: We will develop that.

Q. (By Mr. Kriger) On the occasions when you did not play, Mr. Light, I will ask you whether or not you were otherwise employed? A. No.

Q. And were you available for service at the theatre on those occasions? A. At all times.

Q. And are you able to testify as to the other members of the orchestra? A. You say am I able?

(319) Q. Are you able to testify as to the other members of the orchestra? A. I am able to testify this far, that the entire orchestra was at rehearsal every morning, and they were instructed to be there, prepared to work.

Q. And at whose instructions? By that, I mean, rather, at whose choice? By that, I mean, was it the members of the orchestra, or the theatre?

Mr. Garver: Objection.

Trial Examiner Spencer: I am afraid I don't understand the question. Could you frame that a little bit more simply, Mr. Kriger?

Q. (By Mr. Kriger.) How did it happen then, Mr. Light, that you didn't report for work? Strike that.

How did it happen, then, Mr. Light? At whose instructions, that you did not work on the occasions when—

Mr. Garver: When they got paid for not working? By whom were you instructed not to come to work; is that the idea?

Mr. Kriger: I ask that that be stricken.

Trial Examiner Spencer: Now, Mr. Garver, I wish you would cease and desist from that type of interruption. If you want to make an objection, make it in an orderly manner.

Now, get your question straight, Mr. Kriger.

Q. (By Mr. Kriger) At whose instructions did you fail to report for work on the occasions you indicated?

(320) Trial Examiner Spencer: Now, Mr. Kriger, he has testified—and I suppose he meant it—that they reported all the time. Whenever there was a band, he has testified that the orchestra reported at the pit for rehearsal.

Now, I assume that there were some occasions that although they reported for work, they didn't actually perform; is that correct?

Mr. Kriger: That is correct.

Trial Examiner Spencer: Now, when you actually didn't perform, at whose instructions was it that you did not perform?

The Witness: Our immediate supervisor, our leader, who I imagined received the instructions from the manager.

Mr. Rappaport: Now, I move to strike out the latter part of the answer, what his imagination tells him.

Trial Examiner Spencer: Well, you have something more tangible to go on there than imagination, don't you?

The Witness: Certainly, I do.

Trial Examiner Spencer: You know that is a fact, don't you?

The Witness: Yes, sir; I do.

Q. (By Mr. Kriger) Now, during your period of employment at the Palace Theatre, you likewise performed on radio broadcasts, did you not? A. Yes, we did.

(321) Q. And what was the purpose of the radio broadcast, if you know? A. The purpose of the radio broadcast was to advertise the coming shows at the Palace Theatre.

Q. And the management of the Palace Theatre, would it participate in such advertisements? A. That is right; they did.

Q. What role in the radio show did the manager of the theatre have? A. You say what role?

Q. Yes. A. He had the role of presenting the script to be discussed over the radio.

Q. Now, relative to the compensation which you received from the Palace Theatre, how was that paid to you?

A. In cash. Is that what you mean? In cash or check?

Q. That is right. A. It was paid to me in cash.

Q. And what was done relative to tax deductions? A. We paid our regular tax.

Q. Did the management withhold withholding tax?

A. Yes, they did.

Q. And Social Security? A. Yes, they did.

Q. And Workmen's Compensation? (322) A. I imagine they carried it. That was not deducted, as I know of.

Q. And the payments which you made to the union, this 2 per cent, what was the source of the 2 per cent?

A. From my salary.

Q. From your salary. Did you say from your salary?

A. From my salary.

Q. And did any of that money come from the employer, the 2 per cent? A. No, sir.

Q. Who did you pay that to? A. The leader of the orchestra, who in turn turned it into the local.

Q. Now, Mr. Light, I believe you are also a member of the union negotiating committee in its dealings with the Palace Theatre? A. Yes, sir.

Q. Who are the other members of the committee?

A. It was composed of Mr. Teagle, Mr. Dilley and myself.

Q. And where is Mr. Dilley? A. I understand that he is in Florida.

Q. Now, in your capacity as a member of the local, and as a member of the negotiating committee, have you conferred with me? A. I have.

(323) Q. Do you remember how many times prior to, say, the last week? A. Oh, I would say two or three times.

Q. Now, you have an Executive Board, too, I believe? A. We do.

Q. How many members on that? A. Nine members on the Executive Board.

Q. Have you met from time to time, with you and Mr. Dilley, and Mr. Teagle? A. We have.

Q. For the purpose of discussing these negotiations? A. We have met.

Q. Were you present at a meeting on the 8th of May, at the union headquarters? A. Yes.

Trial Examiner Spencer: What year?

Q. The 8th of May, 1949? A. That is right.

Q. And would you state who was present on that occasion? A. Well, there was Mr. Teagle, Mr. Dilley and myself representing the local, and representing the Palace Theatre I believe was the two Gamble brothers, Ron, and I think the other man's name is Lou, and Mr. Rappaport, and a Mr. Furman. I don't remember whether there was another one or not. It seems like there was. Maybe that was all.



(324) Q. And are you able to state what the purpose of that meeting was? A. The purpose of the meeting, as I recall it, was to try to determine some basis for some sort of working agreement with the Palace Theatre.

Q. Had you seen any of the correspondence between Mr. Rappaport and Mr. Teagle prior to the meeting? A. Yes.

Q. And were you advised of the status of the negotiations prior to the meeting? A. Yes.

Q. Who was the spokesman, if you remember, for the management? A. Well, I would say that Mr. Rappaport probably took the most active part.

Q. And at that meeting, what did the union state? Well, strike that.

Now, will you tell in your own words just what happened at that meeting, what was said, what propositions were made back and forth? A. Well, to begin with, there was a general discussion of the theatre conditions, theatre procedure, and so forth. And then as I recall it, our propositions were submitted to the theatre corporation's officers, and we tried to arrive at some sort of a working agreement, and during the course (325) of that conversation we tried to develop different types of work that can be done by local musicians.

Q. Let me interrupt. What did the union negotiators tell the company you wanted? A. Well, we wanted employment for local musicians, is what we wanted.

Q. And did you make any specific propositions? A. We did.

Q. Will you tell us just what propositions were made, or suggestions were made at that meeting? A. Well, we asked for a stipulated number of weeks work for our men. We wanted something concrete.

Q. And what was the company's reaction to that? A. Well, they vetoed the idea.

Q. What specifically—

Mr. Garver: I object to getting any reactions to anything that he hasn't explained. A stipulated number of weeks, something concrete—the reaction to something concrete is that you can't push it very far.

Mr. Kriger: I ask that that be stricken.

Trial Examiner Spencer: Well, will you ask your question, please, Mr. Kriger?

Q. (By Mr. Kriger) Now, how many weeks work did you ask for, Mr. Light? A. I don't recall just what we did, what the exact number (326) of weeks was in that conversation.

Q. But did you ask for a guarantee? A. That is what we did.

Q. Of a number of— A. That we did, but just what that conversation was, I can't remember exactly.

Q. And do you remember how many weeks you asked for? A. No, I can't say that I do.

Q. What was the company's stated position relative to your request for a guarantee of a certain number of weeks work?

Mr. Garver: Objection.

Trial Examiner Spencer: Overruled.

A. They did not agree to any.

Q. Do you recall what Mr. Rappaport said as to what they would do relative to a guarantee? A. Well, Mr. Rappaport told us that they would guarantee nothing.

Q. Now, what other suggestions, if any, did you make at that meeting? A. We made a number of suggestions. Do you want me to enumerate them?

Q. Would you enumerate, please? A. One of them was that any presentation shows that came through—and what we meant by presentation show was a band, an established band, even though some of the members of the (327) band did perform, do specialties, solos, duets, or what not, that there was nothing—we admit that there is no place for our employment there.

But we did feel that on the type of a show that came through that was just a band, and picked up acts of their own for the duration of the one particular performance, or two or three, and then were disbanded, we felt that that was circumventing the employment of local musicians, and we asked that they be employed when they use that type of show.

Q. And what was the company's stated position on that request? A. They would not agree.

Q. Did you make any other suggestions? A. We did. We made a suggestion of placing a local presentation band upon the stage, dressing it up the same as the name band, let the acts perform in front of it. We presented that type of a proposition to them.

Q. And what was their stated position on that? A. They didn't agree.

Q. Were there any other suggestions that you made? A. There was a suggestion that the orchestra working in the pit supplement the traveling orchestra.

Q. And what was the company's position on that? A. The same thing.

Trial Examiner Spencer: Would you expand your proposal (328) in that respect? Just specifically what did you propose there? You say the local orchestra in the pit. Did you propose that they just sit in the pit?

The Witness: No, no.

Trial Examiner Spencer: Well, just give the entire proposal, then.

The Witness: What I meant by that, Mr. Examiner, was the orchestra to work in the pit, play an overture and supplement any of the work that the orchestra on the stage did, or if required, or if to advantage, play an act, play a chaser, or any other work that was to the advantage of the house.

Q. Did you discuss any appearances on any percentage basis, any percentage of the time? A. You mean did we offer to work on a percentage?

Q. No, I don't mean a percentage of money; I mean on any percentage of appearances. A. Oh, yes. That was still probably another proposition that we tried to develop, was when none of those seemed to be in sympathy with the views, we suggested that of all the shows they run, if they would use local men on 50 per cent of those shows—we tried to point out that we might be able to work something out there.

Q. And so what was the company's stated position on that? A. They wouldn't agree.

Q. Were there any other suggestions that you recall you made (329) at that meeting? A. No, I can't recall any other particular ones.

Q. I will ask you whether or not, at any time at that meeting, the union suggested that the employer pay either the union or the employees for the work that was not performed, or not to be performed? A. No, sir.

Q. And would the company give you any guarantee of employment of your local musicians? A. The remark that I remember is, "We will guarantee nothing."

Q. And who stated that? A. As I remember, I believe Mr. Rappaport made that statement.

Q. Now, about how long do you recall the meeting lasted? A. Oh, I would assume that the meeting lasted from approximately two o'clock in the afternoon until 4:30 or 4:45.

Q. Offering you a document which, for identification, is labelled General Counsel's Exhibit 17, which is dated May 8, 1949, I will ask you if you have ever seen that before? A. Well, I believe that I have, yes.

Q. Would you state under what circumstances that document was prepared, if you know? A. This looks to me like the document that was set up at the close of the meeting we just described, on May 8th.

Q. 1949? (330) A. 1949.

Q. And will you tell who prepared it, and what was said back and forth on that occasion? A. As I remember the situation, the meeting had practically closed, and we were all on our feet, when Mr. Rappaport suggested that these conditions be set down, and he asked Mr. Teagle if he could take it on the typewriter, and I believe Mr. Rappaport dictated this, and Mr. Teagle typed it on the typewriter, and at the finish Mr. Teagle asked him if this was an agreement, at which he says, no, it was just the gist of what we had talked about at the meeting, and what the company was to offer.

Q. And by "he" who do you mean? A. He?

Q. Who said that? A. Mr. Rappaport.

Q. And whose initials appear thereon? A. Well, I recognize L. O. T. as Mr. Teagle. I presume that this is Mr. Rappaport.

Q. Did you see them initial it?

Trial Examiner Spencer: We have that in evidence.

Q. (By Mr. Kriger) You were present also at the meeting the latter part of December, I believe, in Mr. Teagle's office, at which it was present and Mr. Gamble and Mr. Belkin? A. Yes, at the meeting with Mr. Belkin, yes.

(331) Q. About what time did you leave? A. That meeting?

Q. Yes. A. I don't remember. That is the meeting, I believe, that Ronny was late, and I think we started—supposed to start at ten o'clock. I don't remember when I left.

Q. I believe you left before the meeting was over?

Trial Examiner Spencer: Is this the meeting where they made a tentative arrangement?

Mr. Kriger: Yes, sir.

Trial Examiner Spencer: Don't you think it is getting a little cumulative? There doesn't seem to be much difference among the witnesses as to that meeting.

Q. (By Mr. Kriger) Mr. Light, I will ask you, as president of this union, and as a member of the negotiating committee, whether this union at any time has, to your knowledge, demanded that the employer pay either the union or the members—and by "employer" I refer to Gamble Enterprises—for any work which was not performed or not to be performed?

Mr. Garver: Objection.

Mr. Rappaport: We object to that.

Trial Examiner Spencer: Well, you have objected to that, and I think it is an utterly worthless type of thing. You deny the charges, and naturally I didn't think that your witnesses are going to get up there and admit that you have (332) engaged in unfair practices.



I have taken one answer. If you want it, I will take it again, but I don't think it has any value whatever.

Mr. Kriger: With that, you may have the witness.

#### CROSS EXAMINATION.

Q. (By Mr. Garver) Mr. Light, General Counsel's Exhibit 5 which has been received into this record, and testimony about it has been that it shows various periods at which there were traveling bands at the Palace Theatre, and various amounts were paid for groups of nine men during the years 1945, '46, and '47.

I take it you were one of the nine people paid during that period, as shown on that record; is that correct? A. That is correct.

Q. Is there any show on there which covers practically a three-year period—can you look that entire three-year period over, and see if there is any particular period of time or show during which you actually played in the theatre in connection with the show? A. I can.

Q. You can? Proceed to do so. A. The one marked "Ray Kinney."

Q. That is on the first line; is that right? A. On the first line.

Q. All right. Any others? How about down here? I will (333) help you if I can.

How about down at the bottom, when Ange Lombardi was the alleged leader. There is a reference to three days. Were you involved in that in any way? A. Yes, I worked with Ange Lombardi.

Q. Well, is there any show there, at that part of the record, that helps you recall any other work that you did, other than what you have referred to in connection with the Ray Kinney show? A. I don't see any there, no.

Q. All right. I will help you further. On the back of the page there has been some testimony about an item there, having to do with a three-day recital of some local group here in Akron. Did you play in connection with that show? A. I have always played those Larhmer shows here, yes.

Q. Now, with the exception of those two shows you have mentioned, here was the entire period of 1945, of 1946 and 1947, a total of how many days during those entire three years did you actually perform at the theatre? Approximately. Would you say three days, five days? A. I would say—

Q. Well, withdraw that. I will assist you, if I can. You have indicated that you played somehow in connection with the Ray Kinney show; is that right? A. Right.

(334) Q. Now, where were you playing in connection with the Kinney show? A. In the pit.

Q. Anybody else playing there with you? A. Yes, sir.

Q. How many? The entire group, approximately? A. Yes, sir.

Q. Now, any other period of time? This was for four days; is that right? A. I believe so.

Q. Now, any other days, other than those four days, during those entire three years, with the exception now of these four days and the three days of the Larhmer show? That is a total of seven days; is that right? A. That is right.

Q. Can you think of anything beyond those seven days that you actually played in the theatre?

Mr. Kriger: You mean without the rehearsals?

Mr. Garver: I am talking about shows going on in the theatre, with audiences being possibly permitted to attend, and so forth.

The Witness: An audience was always permitted to attend the rehearsals and the broadcast.

Q. (By Mr. Garver) You mean the audience were attending the rehearsals and paying to attend? (335) A. They could.

Q. I won't even comment on that. Is there anything beyond the seven days, during those three years, that you played in connection with shows, during regular performances throughout the day? A. No, I see nothing on this sheet here.

Q. And is there anything that you even recall yourself? A. Not at the moment.

Q. Yet your testimony was that when you were getting this pay from the theatre, you had no other form of employment? If I have misstated your testimony, just tell me.

What were you doing during those three years? There were only seven days that you worked in the theatre. Now, what else were you doing? Weren't you working anywhere? A. Well, I was working on miscellaneous work.

Q. You were working in connection with other musicians around town; is that so? Or anywhere else you could get work? A. Certainly I did some other work.

Q. In other words, you were working during those three years at places other than the Palace Theatre? A. Certainly I did.

Q. All right. Now, directing your attention to rehearsals, for example, here is a period for which the last performance was on June 30, 1946. Do you remember that? Do you see that on there? (336) A. I do.

Q. That is for the Basie band. Do you know what that is? The Basie band? A. Count Basie, probably.

Q. Count Basie? A. Probably.

Q. Now, the next one shown is for a four-day period ending August 18th; is that right? A. That is right.

Q. For Wald. What band is that? A. That would be Jerry Wald.

Q. Now, between the date of 6-30-1946 and the several months later when the Jerry Wald band came in, do you mean to tell us that your band was rehearsing in the theatre? A. Yes, sir; we did.

Q. In other words, you were down there just rehearsing when the show, wasn't even operating any shows of any kind; isn't that so? A. That is right.

Q. For months on end, when the show was just operating movies, you nine men had the privilege of going down into the theatre and having rehearsals, or doing anything you wanted; isn't that so? A. I wouldn't call it that.

Q. Well, who asked you to come down and hold rehearsals in (337) the theatre during the months when only

movies were being operated? At whose direction was that?

A. The leader of the orchestra.

Q. When you were working in connection with other fellow musicians around town, were you a part of any particular band, during 1945, '46 and '47? A. No, I wouldn't remember any particular name.

Q. Were you working with any particular group?

A. No. I may have appeared at some place more than one time, but—

Q. Well, were you just playing odd jobs, waiting for some job to call you, or was there any particular group that you would play at various functions together? A. I would call it more that.

Q. Now, let's take a period of time when the theatre was operating movies, just movies, for months, just movies. You were going down there and holding rehearsals; is that right? A. Yes, sir.

Q. What would you rehearse? A. We would rehearse music.

Q. Anything you wanted to; is that right? A. We would rehearse music.

Q. Would that be with any particular group? A. You say would that be with any particular group?

Q. Would it be with any particular group of nine or 12, or (338) who would it be? A. It would be the house orchestra.

Q. And they would be rehearsing anything that you wanted to play; is that right? A. Well, you could term it that.

Q. And the house orchestras, during those years, was it a house orchestra that played seven days out of three years? That is the house orchestra of the theatre; is that what you mean? A. The house orchestra that I am referring to is when I was there, during the period when I worked 52 weeks a year, seven days a week, and couldn't get a week off.

Q. Now, I follow you. You mean during those years before the traveling bands were coming in, before 1942. Then you had a house orchestra; isn't that right? A. And we had one still up to the finish.



Q. When was the finish of when your house orchestra used to play this week after week? A. According to your records here it is July 2, 1947.

Q. No, forget about the records. According to you, when was it that the house orchestra stopped playing week after week, these 52 weeks a year that you talk about? A. Well, you will have to consult someone that can tell you when vaudeville was finishing up.

Q. All right. To borrow a phrase I have heard around here, (339) I will buy that.

Mr. Kriger: I move that that remark be stricken.

Trial Examiner Spencer: Granted.

Mr. Garver: Well, I will say I accept that answer.

Trial Examiner Spencer: Well, you are not supposed to comment on testimony until you get around to argument, counsel.

Q. (By Mr. Garver) Now, directing your attention to 1945, '46 and '47, when you were one of the nine men that was getting this pay referred to on G. C. No. 5 which I have shown you, was Ange Lombardi—did he have any particular position in the union? A. Ange Lombardi?

Q. Yes. A. You say position in the union? Did I hear you—

Q. Yes. A. Not at that time.

Q. What positions in the union has he held that you know about? A. Ange Lombardi is an officer of the local now.

Q. What office does he hold? A. He holds the office of trustee.

Q. What about Donald Owen? Has he ever been an officer of the union? A. He has not.

Q. What about Harry Clark? A. He has not.

(340) Mr. Garver: Mr. Examiner, I am reading these names from the record on the company's payroll.

Q. (By Mr. Garver) Of course, you are the Reginald Light referred to on that record.

Now, what about John Marvin? Has he been an officer of the union? A. He has not.

Q. What about Wilbur Mathias? A. He is now, but he was not then.



Q. What about Robert O'Dell? A. He is not.

Q. What about James Scroggy? A. He is not.

Q. What about Glenn Tripp? A. He is not.

Q. What about William Hunsicker? A. He is not.

Q. What about Paul Kares? A. He is not.

Q. Directing your attention to the May 8th meeting, you testified, did I understand you to say, that you wanted a certain number of weeks of employment in connection with various shows? Is that your testimony, something like that? A. Yes, we did.

Q. Was that to be for any particular length of time? (341) A. We requested—

Q. By the way, who was the spokesman for your group at that meeting, if anybody? A. In that type of a group, every man speaks for himself.

Q. Well, what was your understanding, your own understanding of what period of time you wanted some employment for? A. We were speaking in the course of a year.

Q. Now, you testified that there were some 50 per cent of the shows that you wanted employment; is that correct? Something to do with 50 per cent of the shows? A. That is right. That is one thing we pointed out.

Q. Now, isn't it true that you wanted to be employed for as many times as would equal 50 per cent of the number of traveling band shows brought in; isn't that correct? A. That is approximately correct.

Q. As I understand this—see if I get this clear: In other words, for every two times that there would be a traveling band brought into the theatre, your group should be used for at least one performance? That would be equivalent to half, or equivalent to 50 per cent. Am I right, or correct me if I am not. A. What our original thought was, if they brought in two shows, that our local musicians should play one.

Q. One of those two shows? A. That is right.

(342) Q. In other words, the guarantee that you wanted, or the amount of employment that you wanted, you wanted to play shows based upon the number of traveling shows that would come in; isn't that right?

In other words, for every two, you wanted to play one? A. We figured that we were entitled to half of the work, at least.

Q. So that was the amount of work you wanted. It wasn't a question of how many weeks; you wanted half of whatever the work would be, half of the number of traveling shows; is that correct? A. No, sir; it is not correct. You are involving two different statements that I made into one.

Q. Well, you clarify it any way you want. Take your time. A. The first thought that we offered to the theatre group was for a stipulated number of weeks employment for local musicians.

Trial Examiner Spencer: Regardless of name bands coming in?

The Witness: That is right.

Trial Examiner Spencer: I just wanted to get it clear.

The Witness: That is right. We wanted a stipulated guarantee of so many weeks work for local musicians. That was the first offer.

Q. (By Mr. Garver) When was that offer made? (343) A. I believe that was in the May 8th meeting.

Q. All right. Go ahead. A. Then the other one, that you had confused with that, when that was rejected we then suggested that no matter what type of show they brought in, that our local musicians play half of them.

Q. And you don't have any recollection of how many weeks work you had in mind under the first suggestion that you have testified about? A. I stated that I don't recall what it was at that meeting, no.

Q. Do you have any idea what it was? Was it two weeks, three weeks, four weeks, 20 weeks? A. It may have been ten, it may have been 20.

Q. You have no recollection? A. It is not clear in my mind any more.

Q. Might it have been 30? A. I am sure it wasn't 30.

Q. Might it have been 15? A. It might have been ten.

Q. Might it have been 5? A. I think it was more likely to have been 10.

Q. Now, under your proposal, or under your suggestion, if there had been a traveling band brought in one week, and the second week another traveling band was brought in, and your (344) people were given an assignment in the pit to play at the same show, would that have been consistent with what you wanted?

Mr. Kriger: I didn't hear that.

A. I would believe that it was.

Mr. Kriger: May I hear that?

(The reporter read the question and answer.)

Q. (By Mr. Garver) And that would have satisfied the conditions that you were seeking? A. As I understand you, it would have.

Trial Examiner Spencer: Are you finished, Mr. Garver?

Mr. Garver: That is all.

Trial Examiner Spencer: Mr. Rappaport?

Mr. Rappaport: Yes, just a few questions.

Q. (By Mr. Rappaport) Mr. Light, you testified about broadcasting. All of that occurred prior to 1945, didn't it?

A. It may have. I am not sure, Mr. Rappaport.

Q. Well, it didn't occur during the period covered by that General Counsel's Exhibit 5 that you have examined?

A. I couldn't say for sure on that, Mr. Rappaport.

Q. That station has been away from here for a good many years, hasn't it? A. Yes, the station, I guess, is in Cleveland, now.

Q. Yes, and you had an orchestra that was known as the Palace Theatre Orchestra, that was a dance orchestra also, (345) wasn't it? A. That was a dance orchestra?

Q. Yes. A. No, sir.

Q. You mean you didn't play dances, that group? A. That may have been some of the individuals that played dances, but not as an orchestra.

Q. Not as an orchestra. Now, you don't mean to say, do you, that when you came to this theatre and rehearsed, that those rehearsals had any connection with anything that appeared on the stage of the theatre at the time these

traveling bands came in? A. Well, Mr. Rappaport, knowing your background as I do, of being a man in the show business for a number of years, I think you realize that a musician has to keep in shape, and the orchestra has to be proficient along those lines, and I think you recognize what I mean when I say that was probably some of the reasons for rehearsals.

Q. I appreciate your comment, but it doesn't answer my question. The question I asked you is whether those rehearsals had anything in the world to do with what these traveling bands were going to play on the stage of that theatre when they appeared. A. Only to the extent that it probably kept some of the men in shape, if they were needed.

(346) Q. Now, I want to get to this May 8th meeting. You said you made a number of proposals, one of which, for instance, was that you have employment every other time that a stage band appeared. Didn't I, or some of the rest of us, point out to you the impracticability of that? Didn't we give you a reason why that wasn't practical? A. That was discussed pro and con.

Q. Well, I say, we assigned reasons. We didn't just arbitrarily say no, did we? A. Probably not to that specific question.

Q. All right. Now, when you proposed that your local band just simply play in the pit, didn't we explain to you that that had no attraction value for the theatre, and therefore there was no room for that kind of employment? A. I think that was all discussed, yes.

Q. Well, I mean, we said that to you, didn't we? A. Yes, probably you did.

Q. And didn't we also say to you that we were perfectly willing and very happy to give your members employment whenever we could actually use them? A. Well, everything that you have said, I guess, was discussed and remarks probably made at that meeting.

Q. All right. Now, the entire conference was rather harmonious. There wasn't any acrimony shown or any fussing or anything of (347) that sort, was there? A. No.



Q. We reasoned out with you and argued with you your various proposals; isn't that right? A. Well, I wouldn't say that we reasoned them all out, no.

Q. Well, I said we did. I don't say you did, but we, on our side. A. Well, all I know is that everything we proposed was not agreed to.

Q. That is right. Now, then, finally didn't I say to you, "Now, we have explored this thing, and in many instances you did agree with our reasoning, did you not?" A. Oh, I guess that there is—

Q. For instance, you agreed with us that there was no place for you when a complete unit came into the theatre that was a traveling unit of its own. Didn't you agree to that? A. Yes, there was quite a discussion on that. That was relative—

Q. Well, didn't you agree we were right about that? A. I can't exactly say yes, because there was too much discussion on that, Mr. Rappaport.

Q. All right. Well, finally, then, I said, "Well, let's put something on paper which embodies the extent to which we are willing to go, and which you and we will recommend (348) to those who are in higher authority, your local, and our New York Office." A. You are referring to this—

Q. Yes, I am referring to that memorandum of May the 8th. A. That may have been the words you used.

Q. Now, that was based on the proposal that we made to you for employment, wasn't it? A. I expect that is what was meant.

Q. Well, that is what it says, doesn't it? You have read it. And you did take that back to your local, didn't you? A. That is right.

Q. What happened when you took it back to the local? A. May I see this? Well, I cannot recall, Mr. Rappaport, the exact action that was taken on this.

Q. Let me try to refresh your memory. Didn't your local, at that meeting, take the position that before you would pass upon that, you wanted to submit the matter to the counsel for the American Federation of Musicians to



see whether, under the law—not the musicians law, but the law of the country—you had a right to demand anything further than that. Isn't that what happened at your meeting? A. I can't seem to connect that up, Mr. Rappaport.

Q. Well, you did refer to the attorneys for the American (349) Federation of Musicians, didn't you? A. Yes, I believe the contents of this was referred to them.

Q. And for the purpose of ascertaining whether that was within the law, or whether you could go further than that. Wasn't that the idea of referring it to an attorney? A. Well, naturally we are governed by our National Body, and their attorneys are naturally our advice, so—

Q. Well, you are aware, aren't you, of Article 18, Section 4, which specifies that with the permission of a local, a traveling band can come in without engaging a local orchestra? A. Yes, sir; I believe that is part of the National bylaws.

Q. And that has been the bylaw for a good many years, hasn't it? A. I don't know how many years, but I know it is.

Q. At least five or six years; anyhow? A. Possibly.

Q. Now, you knew at that time, without referring to the counsel of the American Federation of Musicians, that had you wanted to, you could have permitted these traveling bands to come in without any interference on your part?

Mr. Krüger: I object to that. The question implies there was interference. There is no evidence of that.

Mr. Rappaport: Well, let me put it this way:

Q. (By Mr. Rappaport) You knew at that time that under that particular section of your union laws, the local could have (350) consented to a traveling stage band coming into Akron and playing at the Palace Theatre without the employment of a local orchestra? A. Mr. Rappaport, are you referring to this here, or are you referring to some specific case of something coming in?

Q. I am asking you whether you didn't know, and don't know now, that during all the time of this contro-

versy, your local had the right to permit a traveling stage band to come into Akron and play the Palace Theatre without engaging a local orchestra? A. That is a national law; yes, sir.

Q. Well, you knew that at the time you referred this to the attorney for the American Federation of Musicians, didn't you? A. Probably.

Q. Well, don't you know whether you knew it or not? You did know it, didn't you? A. I will have to say that I did know it, yes.

Q. That is what I thought. Now, your entire motivation in making demands for employment at the Palace Theatre have been based upon this Article 18, Section 4 of the constitution and bylaws of the American Federation of Musicians; is that correct? A. I would have to check them before I would say yes.

Q. You mean to check the section? A. Check the law.

Mr. Kriger: I object to that. I don't see where motivation has anything to do with it.

(351) Mr. Rappaport: It has everything to do with it.

Mr. Kriger: It was done.

Trial Examiner Spencer: I will get around to your objection later. Do you understand the question, Mr. Witness?

The Witness: Sir?

Trial Examiner Spencer: Do you understand the pending question?

The Witness: No, I don't. It has slipped my mind.

Trial Examiner Spencer: Read the question.

(The reporter read the question.)

The Witness: No, sir.

Q. (By Mr. Rappaport) Well, up to July 2, 1947, your orchestra, of which you were a member, was paid without performing any work of any kind at the Palace Theatre, excepting on the two occasions which you have testified to; is that right?

Mr. Kriger: I object to that. That is not the testimony.

Trial Examiner Spencer: Well, counsel didn't ask that question as testimony. He just asked a question. Now, the witness can answer whether that is right or not. I mean, he doesn't purport to be quoting testimony in his question. They are not quotes. Is that correct?

The Witness: Let me have your question, Mr. Rappaport.

(The reporter read the question.)

Mr. Rappaport: I want to modify that by saying from 1945 on.

(352) Trial Examiner Spencer: Do you have the question in mind? The question is, is it a fact that with the exception of the dates that you have mentioned, was this orchestra paid for services they did not render?

That was the substance of the question.

Mr. Kriger: Well, I object to that for another reason.

Trial Examiner Spencer: I am afraid my question is objectionable.

Mr. Rappaport: I think yours is. Mine wasn't.

Mr. Kriger: It is exactly the same question Mr. Garver presented. Now, I don't conceive that—

Trial Examiner Spencer: Well, I sustain your objection to my question, Mr. Kriger.

Let's go back to Mr. Rappaport's question. Maybe you can reframe that, Mr. Rappaport.

Mr. Rappaport: All right.

Q. (By Mr. Rappaport) With the exception of the two occasions, one for four days and one for three days, from the period 1945 down to July 2, 1947, your local orchestra, of which you were a member, received pay from the Palace Theatre without playing any shows; is that correct?

Mr. Kriger: I object.

Trial Examiner Spencer: Your objection is overruled. He may answer.

A. That possibly is true, but we were available.

(353) Q. I didn't ask you if you were available. But you didn't play and you got paid; isn't that right? A. Yes, I have got paid there when I didn't work there.

Q. All right. Now, then, after August 22 of 1947, the Palace Theatre had stage bands on seven different occasions, for which you were not paid; is that correct? A. I don't recall that, sir.

Q. Well, you know whether there were seven; there were a number of stage band appearances after August 22, 1947, for which no local orchestra was paid. A. I don't recall that, Mr. Rappaport.

Q. You don't recall any at all? A. No, sir.

Q. You know that Henry Busse played the theatre the week of August 27, 1947, don't you? A. No, I don't know that.

Q. You don't? Well, were you at the theatre? Did you break your habit of going to the theatre every day or every week? A. It must have been.

Q. Just when did you break that habit? A. It seems to me—you are asking me for dates that happened three or four years ago, Mr. Rappaport. I can't recall them accurately right here.

Q. Well, approximately. Was it before July 2, 1947, or after? (354) A. I would say maybe or about that time.

Q. Before or about that time? A. Yes; that is a rough guess.

Q. Well, just what caused you to interrupt your habit of rehearsing? A. Well, when the house leader disbanded the band, there was no use in me going down.

Q. Did he tell you why he disbanded the band? A. No.

Q. He didn't give you any reason whatsoever? A. Only probably that we weren't going to work.

Q. I will ask you whether he didn't tell you that under the Federal law, now popularly known as the Taft-Hartley Law, the musicians could not collect for services—

Mr. Kriger: Objection.

Mr. Rappaport: Will you let me finish my question?

Mr. Kriger: Sorry; I thought you were through, Mr. Rappaport.

Q. (By Mr. Rappaport) —could not collect for periods, or during periods when stage bands were playing, and not play at the theatre. Did he tell you that?



Mr. Kriger: Objection.

Trial Examiner Spencer: Did he? The objection is overruled.

Did he tell you that? That is the question.

A. No, sir; I don't recall any such remarks.

(355) Q. And he gave you no reason whatsoever for disbanding this orchestra? A. Not to my knowledge.

Q. Well, now, Mr. Light, you know that after July 2, 1947, your union no longer received that two per cent tax, don't you? A. Yes.

Q. You know that? A. Yes.

Q. Well, coming back then, to the Busse engagement, you say you don't remember that. Do you by chance remember the Jerry Colonna engagement, the week of August 6, 1947? A. I surely don't, Mr. Rappaport.

Q. How about Desi Arnez, if they played there? A. Desi Arnez?

Q. Yes, in July of 1947.

Trial Examiner Spencer: Mr. Rappaport, there is no contention made by anybody, is there, that the local orchestra continued to perform at the Palace Theatre after July 2, 1947?

Mr. Rappaport: That is correct. But I want to know what prompted them not to demand pay.

Trial Examiner Spencer: Well, the fact, though, is perfectly clear on the record. There is no dispute about the fact.

Mr. Rappaport: All right.

Q. (By Mr. Rappaport) Just why didn't your orchestra leader, or the members of your orchestra, demand any pay after the (356) Taft-Hartley Law went into effect?

Mr. Kriger: I object to that.

Mr. Rappaport: If you can answer it.

Trial Examiner Spencer: Can you answer that?

A. I don't remember demanding any pay there at any time myself.

Q. Well, you know your orchestra leader collected, don't you? A. He never collected mine.



Q. Well, then you did collect it? A. I did.

Q. Yes. But after July 2nd you didn't collect any, did you? A. The dates I can't remember that way, but probably not.

Q. Well, not after the date that is fixed or shown in that G. C. No. 5. Now, can you give me any reason why you didn't collect it after that?

Mr. Kriger: Objection.

Trial Examiner Spencer: Oh, he may answer.

Do you know of any reason why you didn't keep on collecting your pay?

A. Well, I don't know. I was employed at the theatre, and went up and collected my pay the same as any other employee.

Q. I am speaking of the time after July 2, 1947. A. Well, I couldn't tell you, Mr. Rappaport.

Q. You never went back after that date to collect any pay, did you? A. I guess not.

(357) Mr. Rappaport: That is all.

Mr. Garver: Mr. Examiner, I realize that I have already examined this witness. I have a couple questions I would like to ask, if I may.

Trial Examiner Spencer: All right, sir.

Mr. Kriger: No objection.

Q. (By Mr. Garver) Mr. Light, according to the payroll records, the last period for which the group of nine is shown as having the leader Mark Houser was for the period ending February 26, 1947.

I will just direct your attention to that, and as a matter of fact, I show you the record. Does that conform to your recollection? I am handing you G. C. No. 8.

Does that conform to your recollection of the group of nine men listed there that were getting the pay, together with Mark Houser, for the period ending February 26, 1947? A. Probably so. It looks familiar.

Q. And you are one of those listed? A. That is right.

Q. Then, for the following period for which there was pay, from March 26, 1947, there is a new leader shown, by the name of Ange Lombardi.

Now, tell me, isn't it correct, that from the period that you have just described, over to the time now when Ange Lombardi is listed as a leader, the entire complement of (358) nine persons who were to get paid, with the exception of yourself, was changed? Is that right?

From February 26th over to March 26th, the entire nine were changed completely, so you had a different list of nine men; is that right? A. You are wrong, Mr. Prosecutor.

Q. Well, with the exception of yourself? A. No, sir.

Q. Who else? Let's take it right down the line. A. Okay.

Q. On the earlier list, the February list, Mark Houser is the leader; is that right? A. That is right.

Q. Under him there appears the name Paul Kares? A. Right.

Q. Did he continue into the next list? A. No, sir.

Q. He was dropped? A. Yes, sir.

Q. The next man shown is Reg Light? A. That is right.

Q. You continued into the next list to receive pay? A. That is right.

Q. Next there is a Henry Chernin? A. Right.

(359) Q. Did he continue into the next list? A. I don't see him.

Q. All right. Then there is Robert Lose? A. Lose.

Q. Does he continue into the next list? A. I don't see it.

Q. All right. Then there is Mark Houser, Jr. Did he continue into the next list? A. I don't see it.

Q. All right. Then there is Ralph Herron. Does he continue into the next list? A. I don't see it.

Q. Then there is John Marvin. Does he continue into the next list? A. He does.

Q. So then there is one other than yourself that continued over. What about David Williamson? A. I don't see him.

Q. All right. Now, do you want to say that Mr. Prosecutor was entirely wrong? There was yourself and this

John Marvin who continued into the next list. Aside from that, I am right? A. Aside from that. When you said myself only, I said you were wrong.

Q. Do you know what brought about practically this entire change of the complement of the men that were to get pay between (360) February and March, with a new leader right down the line, with the exception of yourself and Marvin? A. Do I know?

Q. Yes. A. Could I be permitted to speak, Mr. Examiner?

Trial Examiner Spencer: That is all right. Be perfectly frank all the time.

The Witness: Mr. Ange Lombardi is in the room at this time. If you would care to call him up here and ask him why any of those changes were made, or why any of those men were retained, I think it might be to the advantage of all concerned here, and it might be a little enlightening to the Examiner.

Mr. Garver: Well, we will take your suggestion under consideration. That is all the questions I have of you at this time.

Trial Examiner Spencer: Anything further? The witness is excused.

(Witness excused.)

Trial Examiner Spencer: Take a short recess.

(Short recess.)

Trial Examiner Spencer: Are you ready, Mr. Kriger?

Mr. Kriger: I would like to call Mr. Lombardi and ask him one question.

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ANGE LOMBARDI, a witness called by and on behalf of the Respondent, being first (361) duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Kriger) Will you state your name, please?

A. Ange Lombardi.

Q. And your address? A. 1228 Dover Avenue.

Q. I believe you were the leader of the band at the Palace Theatre which succeeded Mark Houser's band? A. I was.

Q. Now, why did you retain Mr. Light as a member of the new band?

Mr. Rappaport: To which we object, because it is entirely immaterial why he retained him.

Trial Examiner Spencer: Well, counsel asked a number of questions along that line. I can't permit them on one side and exclude them on the other. He may answer.

The Witness: The inference was drawn that—

Trial Examiner Spencer: No.

Q. (By Mr. Kriger) No, just answer my question. A. Well, I consider Reg Light as one of the best theatre drummers in this part of the country.

Mr. Kriger: That is all.

#### CROSS EXAMINATION.

Q. (By Mr. Rappaport) He didn't drum at that time in the theatre, did he? (362) A. Yes, he did.

Q. In March, 1946? A. I don't remember dates, but he did, for me, in the theatre.

Q. You mean during shows? A. Yes, sir.

Q. Well, your orchestra wasn't playing, was it? A. Yes, it was.

Q. Oh, the three-day engagement, is that the one you are referring to? A. Yes, sir.

Q. But you didn't play the other engagements when stage bands appeared? A. I was on call.

Trial Examiner Spencer: Now, he was called for a limited purpose. I am going to hold the examination down on this witness to the scope of the direct examination.

Any further questions?

Mr. Rappaport: No.

Trial Examiner Spencer: You are excused.

(Witness excused.)



HERSCHEL KRIGER, called as a witness by and on behalf of the Respondent, having been first duly sworn, testified as follows:

Trial Examiner Spencer: Now, Mr. Kriger, do you have a statement that you want to make in the nature of testimony (363) under oath? You may proceed at this time.

The Witness: That is correct. I originally planned to call Mr. Belkin to testify to these facts, but Mr. Belkin is out of the city.

Towards the end of December, 1949 I received a call from Louls Belkin, attorney-at-law, of Akron, who asked me whether or not I would object to him acting as mediator in the dispute between the Musicians Union and the Palace Theatre. I indicated I had no objection, and suggested that he call a meeting if he desired so.

So he arranged a meeting, calling Mr. Teagle, I understand, Mr. Gamble. I was advised that the intermediary that got Mr. Belkin into the picture was Mr. Rogers, the business representative of the Engineers Union, who then was having certain negotiations with Mr. Gamble.

We had a meeting pursuant to the arrangements which he made, in Mr. Teagle's office. It was on a Sunday morning, the meeting being called for ten o'clock. I forget the exact date, but it was some time in the latter part of December, as I recall.

Trial Examiner Spencer: 1949?

The Witness: 1949. And Mr. Light was present, Mr. Belkin was present, Mr. Teagle was present when I arrived. Subsequently—I do not recall the time,—Mr. Light left, having to leave, and I don't recall whether he left before Mr. Gamble arrived or not.

(364) Mr. Gamble stated that he was very much interested in making arrangements for the first of the RKO Units, which he stated had to be contracted for out of New York.

One of the units then was playing in Youngstown, and he indicated that he probably could get the unit in Akron. He wanted to put it on some time in January, and he



wanted a contract for the employment of our local musicians on that occasion.

We indicated that there would be no objection. He didn't want to contract any further than for the one engagement, because he expressed himself as being fearful of the reception of the theatre-going public in Akron to live shows, inasmuch as there has not been any live shows for some period of time.

He did state, however, that it was his suggestion that he would like to stage a traveling band without any local musicians, to follow up the first vaudeville engagement, probably in February, and it was stated that the union would agree to that arrangement.

The net result was that all the—and it was stated, subject, of course, to the approval of Mr. Gamble's superiors in New York—but he himself was agreeable to the following arrangement:

Number One: That there should be an agreement for the employment of union musicians covering not more than two engagements at the theatre in Akron, and that the purpose would (365) be to determine the receptiveness of the theatre-going public of Akron to so-called live theatrical entertainment.

The two engagements should be held during the months of January and February, and on the first of the engagements, they would employ a band or orchestra of nine members of Akron Musicians Local 24, and that the second engagement should only be held if, in the discretion of the Palace Theatre, it wanted to hold it.

On that occasion, it would employ as musicians members in good-standing of the American Federation of Musicians.

It was agreed that the employment would be at the standard scale, standard working conditions for that type of theatre in Akron, and that the number of days of the second engagement would be the same as the number of days of the first engagement, or at any event, that wouldn't be any longer; that the two engagements would be held prior to March 1, 1950, and that the working agreement

which would be executed covering the two agreements would expire upon the completion of the second engagement, or in any event by March 1, 1950, and that within a week after the expiration of the agreement and the working agreement, the parties would meet for the purpose of collective bargaining upon a new agreement.

It was further agreed that the agreement was conditioned upon the Palace Theatre being able to procure a delay in further proceedings in these NLRB proceedings.

(366) Now, as I recall, those terms were agreed to between Mr. Gamble and the representatives of the union subject, of course, to approval by his superiors in New York.

Subsequently, I believe the next day, when I got back to the office, I wrote up a memorandum of that agreement. Before Mr. Teagle could submit it to Mr. Gamble for his signature, Mr. Belkin called me from Akron and advised me that Mr. Gamble had advised him that the office in New York would not go along with it.

In the meantime, while we were there, and I think Mr. Gamble was still there, Mr. Belkin called Mr. Hull, or I believe he called Mr. Fusco, either immediately prior thereto or thereafter, Mr. Hull being the Regional Director of the Labor Board in Cleveland, and Mr. Fusco being the Chief Legal Officer, and made arrangements, at Mr. Belkin's request, for continuation of the hearing, which I believe had been scheduled for some time in January, until a time after the 1st of March.

Mr. Garver: When you say "made arrangements for the hearing" you don't mean that any hearing was actually scheduled?

The Witness: A date had been tentatively scheduled.

Mr. Garver: But I mean there was intention, apparently, to proceed with the case, but the office procedure was held in abeyance pending the outcome of what you were trying to do?

The Witness: That is correct. As I understood it, the hearing was set for about the middle of January. A date had (367) been picked. I believe, if I am not mistaken, it

was about the 14th of January, although it may not have been that date.

And as a result of those telephone conversations, the hearing was postponed, pursuant to the understanding we had at that time.

Mr. Garver: That is what I meant to correct. There wasn't any postponement of the hearing; you mean that the proceedings were not instituted; is that what you mean? You mean this hearing hasn't been subject to any postponement?

The Witness: No, this hearing has not.

Mr. Garver: I see.

The Witness: At that point, I don't recall whether the complaint had been issued or not.

Trial Examiner Spencer: I think that is all very immaterial to the issue. Shall we get on and finish your testimony, please?

The Witness: That is all.

#### CROSS EXAMINATION.

Q. (By Mr. Garver) If I understand your testimony, it had to do with some plan or intention on the part of Mr. Gamble to bring in this Youngstown show; is that what it had to do with? A. Well, I wouldn't call it the Youngstown show; it was the RKO Vaudeville which was then playing in Youngstown.

Q. And then this tentative arrangement or discussion between you had to do with some limited arrangement for a two-month (368) period; is that correct? A. That is correct. The agreement was to be for a two-month period, and to expire specifically at the end of the two months.

Q. And what could take place? What were you willing to tolerate during that two-month period? What was the organization willing to tolerate? A. Could I enter an objection to the question, Mr. Examiner?

Q. Well, what was to take place during that two-month period? Two shows, or just what was it? A. There was to be two shows, one the first of which was to employ members of the Akron Musicians Local No. 24. The second

one, which was to be at the discretion of the employer, as to whether it was to be held or not.

Q. But you were not able to come to any understanding, or certainly you didn't make any commitment that after the two-month period, the theatre would be able to bring in traveling bands without being faced once again with your prior request that 50 per cent of those shows utilize local bands; isn't that so? A. The contract provided, or rather, the agreement—the tentative agreement, which we reached, provided that at the end of the two months, the parties would resume collective bargaining upon the issues.

Q. Well, at the end of the two months, the whole subject, or whatever there was between the parties, would once again be (369) open. There was no binding arrangement or offer on the part of your organization beyond the two months; is that so? A. And likewise, there was no binding arrangement on the part of the employer.

Q. Call it collective bargaining, or anything else, the problems would arise again after this specific understanding would expire? A. That is correct, and the parties agreed to resume bargaining on the matters in dispute.

Q. And both parties would be left again right where they were, after the two months? A. That is right.

Mr. Garver: That is all.

Trial Examiner Spencer: Are you finished, Mr. Kriger?

The Witness: Unless Mr. Rappaport has something.

Mr. Rappaport: Nothing.

Trial Examiner Spencer: You are excused. (Witness excused.)

Trial Examiner Spencer: Do you have further witnesses?

Mr. Kriger: We rest.

Trial Examiner Spencer: Any rebuttal?

Mr. Garver: No rebuttal.

Trial Examiner Spencer: What is your pleasure on oral argument?

Mr. Kriger: I would prefer to just submit a brief.



(370) Trial Examiner Spencer: Do you care to argue orally, Mr. Rappaport?

Mr. Rappaport: My argument would be rather brief, and I think we would like to argue the matter.

Trial Examiner Spencer: Mr. Garver?

Mr. Garver: Mr. Examiner, I would like to present this discussion and argument in connection with this entire matter, and as a matter of fact, I would hope that I may be indulged a sufficient amount of time.

I feel that in view of the fact that we have had a three-day hearing, and in view of the fact that there is a comparatively novel question presented, I could give you all the assistance that I would like to offer, and the benefit of all my thinking on the entire question, and I would like not a limited presentation, but I would like to present a fairly complete discussion.

Trial Examiner Spencer: At this time, Mr. Garver?

Mr. Garver: Yes, sir.

Trial Examiner Spencer: I will be very glad to hear you right now. Are you prepared to proceed, or would you like a recess first?

Would you like a recess, or are you ready to launch right into it?

Mr. Garver: I am ready to go ahead, and I may say that naturally during a trial of this type, I have not had occasion to organize all my thinking, but I would just like to sort of (371) potshot at various ideas I have in mind.

(Short recess.)

Trial Examiner Spencer: On the record. Before you start your argument, Mr. Garver, I would like to have some indication as to whether or not the parties want to file briefs. I believe Mr. Kriger, you said you would?

Mr. Kriger: I would like to file a brief; yes, sir.

Trial Examiner Spencer: And would you like to file a brief, Mr. Rappaport?

Mr. Rappaport: No, I think that I can say all that I have to say.

Trial Examiner Spencer: And you will not want to file a brief, Mr. Garver?



Mr. Garver: Probably not.

Trial Examiner Spencer: Now, you will have to have your brief within 15 days of the close of the hearing, Mr. Kriger. That is all our rules allow.

Mr. Kriger: Well, that is okay.

Trial Examiner Spencer: You can ask the Chief Trial Examiner for an extension, if you want.

Mr. Kriger: You mean 15 days from today?

Trial Examiner Spencer: Yes.

Mr. Garver: Perhaps it would also be convenient to have noted in the record this reservation that was made for getting in that telegram of 1947.

(372) Trial Examiner Spencer: Yes, I recall that I stated I would hold the matter open on the telegram for the 15 days.

Mr. Garver: And we have until that time, certainly, to either come to some agreement between the parties as to the admission and the receipt of that document, or its authenticity, or else certainly, if we on the other hand have evidence or intend to be able to produce evidence as to bear upon its admissibility, I take it we can still within that period bring that to your attention?

Trial Examiner Spencer: Yes, I think we left it that I had reserved ruling, and you indicated you thought you might be able to stipulate, I believe, as to its authenticity.

In the event that I receive such stipulation, I stated that without any further order to the parties I would receive the document in evidence, and it would be automatically made a part of the exhibit file.

Mr. Garver: If you receive a stipulation?

Trial Examiner Spencer: Yes. That is correct. I don't care to have to make any unnecessary orders, and so forth, in closing this hearing. When I close the hearing, I will close it with the understanding that as to that exhibit, the record is open to receive such further stipulations or motions as you care to submit.

Mr. Garver: Just as a cautious man, I am likewise indicating, I take it, that if during that period we are unable to (373) arrive at a stipulation, but general counsel can submit some material showing that if given an op-

portunity to be able to present the evidence which would warrant its introduction, I take it that that could be done during that period. For example, if I submit an affidavit saying that we need further time—

Trial Examiner Spencer: Well, you can always move to reopen a record until the case is transferred out of my hands, Mr. Garver. I have no authority to limit your right to make such a motion.

Mr. Garver: I would like also to move at this time that all the papers in the case be corrected with respect to informal matters such as possibly dates, names, places, to conform with whatever the actual records in this case show to be correct.

Trial Examiner Spencer: Any objection to the motion?

Mr. Kriger: No objection.

Trial Examiner Spencer: The motion is granted.

Mr. Garver: Before getting on to the more material questions in this case, I would like to bring to your attention, Mr. Examiner, bearing upon the question of jurisdiction—which apparently has been brought into issue by reason of the denial in the Respondent's answer—the recent case of Balaban & Katz, known as the Princess Theatre being case No. 8-RC-509, which was decided by the National Labor Relations (374) Board in December of 1949, that being a case in which the Board took jurisdiction over a chain of theatres.

Trial Examiner Spencer: It is my opinion at this time—and I am not stating it to foreclose argument on the matter—that we have jurisdiction on it, and the Board would assume jurisdiction in this case.

If the Respondent's counsel wants to argue to the contrary, I am not closing my mind, but that is my opinion at this time.

Mr. Garver: Likewise, just bearing on another preliminary matter, there was objection by counsel to the background and material which was introduced into this record, and again, for your convenience, I would like to cite to you the case of the Axelson Manufacturing Company, which is reported in 25-LRRM, at page 1338, which

clarifies a Board's decision there reported and decided February 24, 1950, in which the Board points out that Section 10(b) having to do with the six-month rule, is merely a statute of limitations and is not a rule of evidence.

Mr. Examiner, on the basis of the three days of testimony and evidence which has been submitted, I believe it is fair to say that insofar as the essential and critical facts of this case are concerned, they are largely clear, and we have a set of facts which I don't propose to argue as to just what the facts are. I believe the record fully demonstrates them, and I believe there is a rather clear pattern of history and (375) events, and that essentially the problem is whether, in view of the language of section 8(b)(6), the conduct of the Respondent was prohibited by that section.

It is a question, really, of an interpretation of the law, and as I say, the application of a rather simple and clear set of facts. I don't believe this is the place to argue by means of loose stories or just interesting stories, but I may say, in my analysis of this entire matter—and I want to say also that this question, in approaching this question as a representative of the Government, I am not seeking merely to present one side of the argument, unmindful of various little defects and problems that are incidental to it—I have tried to see this entire problem, thinking about it from all aspects, and facing whatever little difficulties there may be in the reasoning process.

But even so, as I have gone through it, I recall that it brought to my mind an experience that I have had a long time ago, with a very complicated mathematical problem which was submitted to us at the University, and I remember that here was this problem that had wheels within wheels and equations of all kinds, of difficult matter to set down in the form of an equation. And yet I found, by strict setting down of what was stated in that problem, in two or three steps, this very long, involved problem became, on three lines, a resulting answer " $X=3$ ," and I mention that now not just merely as a casual (376) observation; it is going to be the gist and essence of my

entire argument, that if you analyze this entire problem, it gets down to a very simple and clear, precise answer.

An analysis of the history of 8(b)(6), shows that the Senate Bill which was originally passed by the Senate—and I believe I am correct in this—did not contain any prohibition, or did not contain a section prohibiting what is commonly described as “feather bedding” that being the term applied to the kind of problem with which we are here presented.

But on the other hand, the House Bill did have a rather extensive set of provisions bearing upon the subject of “feather bedding” that thereafter, of course, there was the conference concerning both of those bills, resulting in an agreement upon a final bill.

I am now directing attention to what the conference report had to say upon the derivation of 8(b)(6):

It is noted in the conference report that 8(b)(6) derives from the House bill relating to feather bedding practices. It is therefore important to go back to the House bill as originally reported.

For example, in the original House bill, there was a provision as follows: “The term ‘feather bedding practice,’ means a practice which has as its purpose or effect requiring an employer to employ or agree to employ any person or persons in excess of a number of employees reasonably required by (377) such employer to perform actual services.”

Then it goes on with various other aspects of a definition of feather bedding practices. For example:

“To pay or to agree to pay more than once for services performed.”

Also, “To pay or agree to pay or give any money or other thing of value for services in connection with the conduct of a business, which are not to be performed.”

Likewise, at another point in the House bill, it was actually declared illegal—incidentally, I might indicate these references as I go along; they are to the two-volume set of the Legislative History of the Labor-Management Relations Act—actually declared illegal for a labor organization to engage in “any strike or other concerted inter-



ference with an employer's operations, an object of which is to compel an employer to accede to feather bedding practices."

That indicates what they had in mind in the House bill.

Likewise, it is interesting to look at what the House reports, with respect to the original House bill, had to say about it, and this is what it had to say: "Feather bedding.' In this bill, as in the Lea Bill"—incidentally, maybe I ought to point out parenthetically that it is generally pointed out throughout the comments of the legislators and senators, that the House bill intended to incorporate the sense of the Lea Bill, and there will be more about that (378) as we go along, but this is particularly interesting—"In this bill, as in the Lea Bill, which passed both houses last year by large majorities, and now is law, an attempt is made to deal with a problem that is becoming a more and more serious menace to the productivity of our country and to the manufacture of goods at a cost within the reach of the millions of our citizens."

And now, note this particularly, and see what the House bill was aimed at: "The present bill is substantially less drastic than the Lea Bill. The latter aimed to eliminate the practices of the American Federation of Musicians, which, under the leadership of J. Caesar Petrillo, requires employers to hire people who do no work, to pay for people the employers do not hire, and to hire more people than the employers have work for." The precise language of the Lea bill is not applicable to industry generally, and so it has been modified accordingly.

"The bill"—meaning the House bill—"applies to the practices described in Section 2(17) the name 'feather bedding' and, by Section 12, makes strikes and other efforts to force employers to engage in feather bedding practices unlawful concerted activities."

Incidentally, the House minority on the House bill was disturbed by the fact that there might be some difficulty in trying to interpret that part of the House bill



which said, (379) "More employees"—that it would be feather bedding to employ "more employees" than are reasonably required by the employer, and all throughout this, and eventually when the final bill was passed, I think they wanted to get away from that problem, namely the problem of trying to determine in each instance how many employees are reasonably required, so that in the last analysis, it would have to be admitted that it wasn't intended, by the 8(b)(6) of the final bill, to try to give to any tribunal that particular burden. In effect, then, the final bill gets away from that aspect of the original House bill.

Again, going on with what is the aim of the anti-feather bedding provisions, one of the congressmen, Gerald W. Landis, had this to point out, just to quote his words—and I am paraphrasing—that the Act, and these are his words "Make it an unfair labor practice to force an employer to hire more help than necessary."

And perhaps a particularly interesting item to have in mind, or an analysis to keep before us in connection with this particular case, is the fact that so much of the feather bedding act or section was directly aimed at dealing with the practices which appeared to be true of the American Federation of Musicians.

Landis, for example, has this to observe—and I am quoting—"No employer should be required to hire more help than necessary. Caesar Petrillo, the Czar of the Musicians Union, decided that our American children must not participate (380) in a musical program over the radio network of this nation unless the station or a sponsor was willing to pay union musicians to do nothing else but stand by in the studio during the children's program." Notice that "stand by" in the studio during the children's program.

"Thus, the children in 200,000 rural schools in the United States are denied the opportunity to learn to play musical instruments by the dictates of one man—Petrillo." And that is the end of the quote. Again, showing what the aim of that House Bill was, Landis, of course, being a member of the House.

I want to point out parenthetically in this analysis that the veto message—and of course, it is now well known in its history, that the Taft-Hartley Act was passed over the President's veto—well, as a matter of fact, when you look at the veto message, in which every section of the act was critically analyzed, there was very little objection made to the feather bedding section of the final act. In other words, that was pretty clear, and a well accepted proposition. There wasn't much aimed against it, even in the veto message.

Now, I want to read to you briefly from the veto message, quoting:

"The bill"—meaning the final bill—"presents the danger that"—excuse me; I am not too clear about that, actually, whether it was the final bill, but at any rate here (381) is what the veto message had to say about the House bill—"The bill presents the danger that employers and employees might be prohibited from agreeing on safety provisions, rest period rules, and many other legitimate practices, since such practices may fall under the language defining 'feather bedding.'"

I want to note that very plainly. There was a concern that perhaps this section would interfere with such recognizably legitimate matters as arranging for rest periods and safety provisions, and I will eventually get to that in this analysis and show you that automatically, the final act is considered as not interfering with that kind of thing at all, but is more directly aimed at a requirement for requiring employees whether they are needed or not.

As a matter of fact, Taft, who of course is recognized as the principal authority on this bill, which he largely directed through the various channels, is considered as the principal on its meaning, and of course he was constantly being questioned by the senators as to what the intention of the various sections was, and it was based upon his interpretation that they eventually passed it, and that is what they had in mind, so anything he had to say becomes particularly significant, because undoubtedly they passed it based upon his interpretations.

Here is what he had to say in his analysis: "Section 8(b)(6) of the conference agreement covers a matter with which the (382) House bill dealt extensively under the topic of feather bedding practices. There was no corresponding provision in the Senate amendment. The provisions in the House bill made unlawful and enjoined any strike to compel an employer to accede to feather bedding practices.

"Among the activities defined as a feather bedding practice by the House bill were"—and then he goes on to enumerate them—"agreeing to employ persons in excess of the number reasonably required; paying money in lieu of employing such an excess number of persons, paying more than once for services performed, paying money for services not performed, and paying a tax for the privilege of using certain articles or operating certain machines or agreeing to restrictions upon their use.

"While the Senate conferees were in sympathy with the objectives of this portion of the House bill"—and note that; the Senate conferees were certainly in complete sympathy with all the objectives of the original House bill on this subject—going on, he says, "While the Senate conferees were in sympathy with the objectives of this portion of the House bill, it seemed to them that it was almost impossible for courts to determine the exact number of men required in hundreds of industries and all kinds of functions.

"The provisions in the Lea Act from which the House language was taken are now awaiting determination by the Supreme Court, partly because of the problem arising from the term (383) 'in excess of the number of employees reasonably required.'

"Therefore, the conferees were of the opinion that general legislation on the subject of feather bedding was not warranted at least until the joint study committee proposed by this bill could give full consideration to the matter."

And now, finally: "Since the matter of exacting money for services not to be performed borders definitely

on extortion, the conferees agreed to an insertion of a paragraph (Section 8(b)(6)) which makes it an unfair labor practice to cause or attempt to cause employers to pay money under such circumstances."

In other words, they finally could see the simpler view was that where it seems to border upon extortion, that is the thing they wanted to aim at directly.

These questions constantly came up in connection with the discussions as to the difficulty of maybe such practices as I have said, of rest periods, and safety conditions and other working conditions being involved, and it would be very difficult for a tribunal to say, "Well, this particular job requires so many men to work safely" and so on, and Taft clarifies that whole aspect. We don't have that problem in Section 8(b)(6) at all.

Those questions constantly came up, and Taft, I notice, clarified this in the Senate, in the Congressional Record, when those problems were raised.

(384) Taft said this: "I am sorry to disagree with the Senator, but it seems to me that it is perfectly clear what is intended. It is intended to make it an unfair labor practice for a man to say, 'You must have ten musicians, and if you insist that there is room for only six, you must pay for the other four anyway.' That is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept."

Very clearly, we have eliminated all that. This case, and the act, does not present the problem of what to do in the situation where there is a safety condition or a working condition, or something of that sort involved, and of course, ultimately I intend to contend and argue that that kind of problem is not involved in the case with which we are concerned here today at all, either. This is more like that final summary that Taft gives us, where you ask for so many musicians, when only six are required.

Again, the very reference to the musicians shows the kind of thing they had in mind, and of course we will get



closer to it; that is the kind of problem we have in the instant case.

As I have said, they repeatedly noted that matters having to do with safety were not feather bedding.

In a final analysis that Taft likewise presented, he has this to say: "Section 8(b)(6): This is a section taken from (385) the elaborate prohibitions in the House bill with respect to feather bedding. All that it does is to make it an unfair labor practice to cause or attempt to cause employers to pay money in the nature of an exaction for services which are not performed or not to be performed. A number of Senators have contended that this means that union requests for payments to employees of wages for lunch and rest periods or for waiting periods when machinery is being repaired will be illegal.

"It has also been stated that it would be a breach of this section for employees who are asked to report for work so as to be available as a relief squad in the event of emergency or need, to demand any money for their time. Of course this section does not affect such industrial practices, as such activities are done at an employer's request and for valuable consideration incident to the employment itself. The use of the words 'in the nature of an exaction' make quite clear that what is prohibited is extortion by labor organizations or their agents in lieu of providing services which an employer does not want."

As a matter of fact, insufficient attention is often given to the part that Mr. Ball had in this entire legislative history, but it is interesting to note Mr. Ball's comment on that section, too. I am having some difficulty in locating that in here for you, but I do want to get it for you, because I think it is important.

(386) Oh, yes; that is at page 1639 of the Legislative History Volumes.

And this is Ball, I believe, speaking—yes, Ball speaking to the Senate:

"Mr. President, in his second list of objections to the bill, under Paragraph (3) of his veto message, the President has this to say: 'The bill presents the danger that



employers and employees might be prohibited from agreeing on safety provisions, rest period rules, and many other legitimate practices, since such practices may fall under the language defining feather bedding.

"Mr. President, that again is a complete distortion of the actual wording of the section to which the President refers, which is 8(b), which makes it an unfair practice for a labor organization 'to cause or attempt to cause an employer to pay or deliver, or to agree to pay or deliver any money or any other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.'"

Now, Mr. Ball goes on to tell you what exactly the intent of the section actually is:

"There is not a word in that, Mr. President, about feather bedding. It says that it is an unfair practice for a union to force an employer to pay for work which is not performed.

"In the colloquy on this floor between the Senator from (387) Florida and the Senator from Ohio, before the bill was passed, it was made abundantly clear that it did not apply to rest periods, it did not apply to speed-ups or safety provisions, or to anything of that nature; it applied only to situations, for instance"—and now, here is the important thing, and I am quoting:

"It applied only to situations, for instance, where the Musicians Federation forces an employer to hire one orchestra and then to pay for another standby orchestra which does no work at all."

Now, that is the reason I went through this whole analysis, to show you that as they fought this thing back and forth between the House bill and Senate bill, and analyzed it right down to what the ultimate section was aimed at, and apparently it is clear, without doubt, they all apparently agreed upon this, when you got rid of all the little difficulties that they wanted to eliminate, they ultimately got down to having a section which was intended to eliminate and get at standby orchestras.

So we reach that point in this discussion, that without question, a standby orchestra, such as the Musicians

Union had operated from time to time, as was discussed throughout the legislative history, that is the kind of precise thing that the Act is intended to eliminate.

Now, that is the first proposition to get clear in mind. (388) What do we have in this case by way of facts? We have, first, a background where for a period of years, there was a standby orchestra.

Now, I have stated it; it is a simple thing to say, and yet, it is the kind of thing, perhaps, which deserves the same amount of paging and length of discussion that I gave to the first proposition.

The matter is simply and abundantly clear in this record that there was a standby orchestra during all those years. Now, where do you go from there? The point must be clearly recognized, and the proposition clearly and simply established, that Section 8(b)(6) is intended to and was intended by Congress, without question, to eliminate the kind of practice that was going on here at the Palace Theatre during 1945, '46, and '47 when they had the standby orchestra.

In other words, here is a simple picture; it is almost amazing that you can analyze a legislative history and bring it around to its application to so clear a proposition. The legislative history shows that 8(b)(6) was intended to eliminate that kind of a standby practice. That can't be gainsaid. That is the first thing that must be recognized in all this argument, in all this discussion.

Trial Examiner Spencer: May I just interrupt you? You conceded, of course, that it is proper to refer to legislative history only where the language of a statute itself is not (389) clear. If the language of the statute is perfectly clear, there is no occasion for referring to legislative history on it, is there?

Mr. Garver: I agree with your proposition, but I think—

Trial Examiner Spencer: You contend that this section is so ambiguous that you have to refer to legislative history to tell what it means?

Mr. Garver: I would say that with a section of this sort, with which you have had no—

Trial Examiner Spencer: All right, excuse me.

Mr. Garver: Mr. Examiner, I readily recognize the proposition which you state, which of course is well known amongst lawyers, that when a section of the law is not ambiguous in its terms, generally there is no point in looking to the legislative history, but I am not inclined to agree very readily that with respect to 8 (b) (6) there is no point in looking into legislative history, because it is new, and it applies to a field where we can't readily pick up the language and say, "This is what it means." We don't have enough experience in our law and in our history to know just how to interpret and apply that language, without looking at the field of labor relations, and without looking into the minds of what Congress intended.

I mean, it isn't like, saying, "You mustn't travel more than 50 miles an hour," because we all know what that means.

(390) Trial Examiner Spencer: Would you agree to a second proposition, just as a matter of principle and not application: If the language says one thing, and the legislative history says another, which prevails? I have no doubt that—

Mr. Garver: Oh, the language of the section would prevail, yes.

Trial Examiner Spencer: Yes.

Mr. Garver: As a matter of fact, naturally, having given this some thought, I believe I perceive the kind of question you are getting at, and I intend to deal with it more elaborately.

Once you arrive at the realization that the standby practice which was going on at the theatre, and was being enforced by the union, apparently, in 1945, '46, and '47, there remains only one further question in this case, and that is whether the later demands and the later developments still bring you within the existence of a standby arrangement.

And that brings us down to perhaps the more difficult, but I still contend, comparatively simple questions:

Firstly, what did the union want? In other words, that is the test. You can't get away from it, I am frank to state. If I am wrong about that, then we are wrong about the case; there is no question about it.

The question is whether or not the ultimate demands of the union in this situation still constituted a standby arrangement, which of course is prohibited by the law.

(391) Trial Examiner Spencer: Now, Mr. Garver, it is prohibited by the law only if, when you say "standby"—do you mean this is an attempt to cause pay for services not performed and not to be performed?

Mr. Garver: Exactly.

Trial Examiner Spencer: There may be a difference of opinion on that.

Mr. Garver: Yes, and that is the point where we are in this argument. It is our contention that a standby orchestra, and the type of thing that the statute is aimed at, is not circumvented by the kind of change in the words of the demands which were made in this situation. The situation still remained the same.

That is the question, and that is the contention that we are here making. What was the actual fact of the matter? The union was still saying, "When you have a traveling band, we want to get paid. We want a performance. When you have a traveling band, we want to be down in the pit."

Now, I don't want you to misconstrue the evidence. They also changed that a bit; they also said, "When you have a traveling band, we want to have work." Yes, they wanted work—"We want to have work half as many times as you have traveling bands." I think that is largely a fair summation of what their demands were.

Now, it is true that they said, "Yes, we want to play in (392) the pit; we want to play overtures; we want to play chasers." They are still a standby.

If you are in the pit and doing something which is unneeded and unwanted, the mere fact that you want to engage in some physical activity doesn't alter the fact that it is not a service, and don't forget this: The Act—and to keep in mind your proposition—the Act talks about "services."



For example, let us say that the local orchestra wanted to be in the pit and to blow a whistle to start the acts, and to blow a whistle at the end of the act. If the theatre didn't want that whistle blown, the offer on the part of the union to blow that whistle doesn't, by that simple subterfuge, create a condition of work.

I want to say something parenthetically: When there is enacted on the books of our country a piece of legislation, and a national labor relations policy becomes one in which there is a certain piece of legislation aimed seriously to eliminate a certain practice, that aim of the legislature should not be and cannot be diverted by some casual sophistry to get around it.

The simple suggestion "We will blow a whistle," or "We will play an overture," or "We will play a chaser"—the fact of the matter is, it is imposing upon the employer—and that is the aim here—it is imposing upon the employer an added expense for a local band which he doesn't want.

(393) For example, where a union would say to an employer, "We want work." Sure, they said that all the way through; that is what the witnesses have been saying, because that is a cliché. They wanted to work.

But they want to do something that the employer does not need, and doesn't want. There is no relationship to safety, no relationship to working conditions.

The mere fact that the union would say to an industrial employer, "We want work for a hundred men, or else the rest of your plant isn't going to operate; we want these men to work"—"well, I have no work for them."

"Well, let them carry the boxes around; let them carry the boxes around from one place to another and carry them back."

That would be physical work, but when they are all through, they haven't accomplished a thing. The boxes are right where they were; it is not a service which the employer has wanted, and the subterfuge of going through some physical activity doesn't controvert the fact that no service is being performed.



Take it a step further, in the local situation. Certainly, knowing what the law was, and trying to get around it, they now said—and don't forget this; they are saying this only when you have a traveling band; it is the enforcement of that traveling band rule of their constitution, but still the same—they are now saying, "For every other time that you have a traveling band, we want you to give us work."

(394) Well, we will use their words, "We want you to create a stage show."

The mere fact that they are offering to do something which has no utility, and the employer doesn't want, doesn't alter it from being a useless thing, and doesn't alter it from the fact it is still not a service.

The only difference—and this will surprise you, when you stop to think about it—the only difference between the standby proposition in 1945 and 46, and the proposition that the union is now imposing or suggesting, is this: Not only would the employer have the burden of paying them for not working, as they did in 1945, but in order to legalize their theory, he would have the burden of paying for a stage show that he doesn't want and doesn't need. He would have the burden of keeping his theatre open for an entire week with a performance altogether which he does not want.

You see, the mere fact that the union now tries to get around this section and says, "We want to do some work," doesn't circumvent the sense.

My goodness, there is no doubt about it, there has got to be some intelligent sense to this, and one must have the courage to apply the sense of it.

Trial Examiner Spencer: Do you think it is illegal for the union to negotiate with this theatre for the employment of its members per se?

(395) Mr. Garver: No, you have got to look at that, I believe—and I am just submitting this; I don't mean by my language to direct your thinking—

Trial Examiner Spencer: Well, I think that is what argument is for.

Mr. Garver: Yes, it is legitimate for a union, of course, to bargain with an employer with respect to work that is under consideration. An employer has got people working in his plant, and he is working them every day, and they are now coming to terms with respect to what the rate of pay shall be, and what the conditions will be during the ensuing period.

That is normal collective bargaining, where there is work.

But the mere fact that the union walks up to an employer who doesn't have any work, doesn't ask them, not seeking them, and says to them "We want to bargain with you for work," that isn't bargaining about working conditions for work; that is trying to cause the employer to create fictitious work.

The mere fact that the union wants to call it work doesn't make it work. You can't get over that hurdle so easily. That is creating work, false work, exactly as I said before, even though it sounds silly and sounds very gay, the analogy of moving the boxes. It is meaningless; it is not a service.

Trial Examiner Spencer: Well, I agree with you on your illustration of the moving of boxes, but I don't agree with you in that sort of analogy in a sort of situation when you (396) have a local orchestra and you have a local theatre, which from time to time does employ orchestras.

Is it illegal for that union to try to persuade the orchestra to employ its members? That is my question?

Mr. Garver: It is illegal for them to try to get the theatre to put them to work when it doesn't have work for them. That is what is illegal.

I want to answer that very precisely. They were saying to the theatre—and follow this closely—"If you have 20 traveling bands coming in during the year, we want you to give us 20 jobs, or 10, whichever it may be." It is just a compromising figure, 20 or 10.

They are not bargaining about work; they are conditioning—and I want to repeat that word altogether again and again—they are conditioning the theatre in this

respect. The condition upon the theatre of having a traveling band come in is that they are compelled to comply with the condition of paying for a local band. That is the kind of work that they are trying to create. It is the work that they are seeking.

You will constantly get back to that same thing. As I say, you have to look at 1946, and then at the present time.

In 1946, what were they doing? The condition of having a traveling band in 1946 was that you had to pay for nine men.

The condition at the present time,—and I think this almost sums up the entire argument—the condition in 1949 (397) and 1950 is that when you have a traveling band, you have to pay for a local band that doesn't do anything. That is the thing that you have got to realize and one must face.

The fact that they are playing for a show and seemingly doing something physical, doesn't alter the fact that that is simply a condition. It is the same identical condition. The mere fact that they will now be standing in the theatre doesn't change the fact that they are still a standby orchestra.

The mere fact that they now play a chaser, they are still a standby orchestra. The mere fact that they now say they will be playing for a stage show, when the theatre doesn't want them to be playing, doesn't want them to move the boxes around, in other words, they are still a standby orchestra.

The only way that you can take this case and separate it from 8 (b) (6) is to just try to think of ways to avoid and ignore the plain intent of the law. The intent of the law is to not impose,—and we talk about the Musicians Union's activities all the way through,—the intent of the law was to prevent a theatre or an employer or radio station from being compelled, every time they used one particular group, to pay for some other group that they didn't want.

And I want to make this clear to the Examiner, you can't start thinking about too many suppositions. Sup-

posing they had done this and supposing they had done that? You have got to think about what the case is, what the history is, what the (398) facts of the case are.

For example, if you start talking about a union trying to say to an employer, "We want you to assign those jobs to us, or else our people aren't going to work, or we will prevent the other people from going to work," then you might get into whether or not that is a jurisdictional dispute under 8(b)(4) or (d) or something like that. You would be distorting the situation.

There is no point in trying to broaden this out and think of all kinds of suppositions. We have got to think of what is the situation here.

The situation here is exactly what the legislature intended was to be prevented. Despite the fact that the union goes the mumbq-jumbo of words—and I think the witnesses demonstrated that throughout—the mere fact that they come up with this stuff, "Well, we want to work; we wanted to work"—well, the standby people in the old situation, where they were doing nothing, probably would be willing to do some useless thing around the place, it isn't that they just wanted to stand there and not do anything; they wanted to get paid, even though the employer didn't want them. That is the essence of it. I can't, for the life of me, conceive of how anybody can argue in this day and age, when we are trying to apply sensible meaning and intelligent meaning to the plain intent of our national law.

(399) I would submit that if the Examiner wanted to just blind himself to what the meaning of the law is, and perhaps didn't have the courage to declare himself on it—

■ Trial Examiner Spencer: Your remarks are becoming just a little improper, I think. The Examiner hasn't declared himself on anything.

The Examiner will ask you whatever questions he sees fit to ask.

Mr. Garver: Oh, excuse me, Mr. Examiner; my argument is not intended in that way; I was thinking in terms of whoever might decide—

Trial Examiner Spencer: I don't want you to use that language. You see, I am trying to get such enlightenment as you can afford me, and that certainly is not the proper way to enlighten me.

Mr. Garver: Now, I am mindful that the act talks about receiving payment in the nature of an exaction, and I say to you that even though their position has changed—

Trial Examiner Spencer: I will hear you for not to exceed ten minutes longer.

Mr. Garver: Well, as a matter of fact, I am just about through, and I wanted to say at this point that I probably covered what I had intended to say in the main, and I would like to concern myself, if I may, with any particular questions that the Examiner may wish to have me confronted with.

(400) Trial Examiner Spencer: I would like to ask you what your ideas are as to remedy, in the event the Examiner should agree that there has been a violation here.

Now, this complaint runs only against the local, I observe. I can't see that the International Union is named as Respondent in this case.

Mr. Garver: I think that the General Counsel in this case would have to admit that the International is not named directly as a party.

Trial Examiner Spencer: It can't be named indirectly; it is either named or it isn't, and as I see the complaint, it is not named.

Now, what do you propose in the way of an effective remedy here, where you don't even have the International named as a party, in the event the Examiner should decide there has been a violation?

Mr. Garver: Well, the effective remedy would be for the local union never to take any steps designed to direct or encourage any of its agents or the International to interfere with traveling bands.

Trial Examiner Spencer: Now, what is your evidence that the local has taken such steps?

Mr. Garver: The local, of course, is directly tied in with the International.



Trial Examiner Spencer: They are separate legal entities, (401) as I think you will have to concede, and I am asking you a specific question, now, and I would like to be related to the facts of this case, because as you emphasize, we decide the case on the basis of the facts in this case.

I have to decide on evidence and not argument, which isn't supported by the evidence.

Now, what is the evidence in this case as to the steps the local has taken?

Mr. Garver: I believe an analysis of the evidence would show—

Trial Examiner Spencer: I am not raising any doubt at all; I am just asking you to state it so we will have it. That is all.

Mr. Garver: Yes. The position would be that the International acted as the agent of the local in carrying out the requests and positions of the local.

Trial Examiner Spencer: Well, now, what have you established in the way of evidence as to requests by the local of the International?

Mr. Rappaport: Mr. Gamble's testimony, if I may answer the question—

Trial Examiner Spencer: Well, I am going to get to you, sir. I am going to hear you in your argument.

Mr. Garver: I am trying to answer that, if I may understand your question. I would say that the evidence of the (402) case, which shows the manner in which the International is acting on behalf of the local, is in several phases:

One, by virtue of the nature of the relationship between the local and the International, by reason of the constitution and the constitution and bylaws of the local.

Trial Examiner Spencer: Well, someone has to initiate that causing or attempting to cause. That is the type of evidence that I am referring to. It has to start somewhere.

Mr. Garver: The record shows that the International was repeatedly advised of what was taking place locally.

Trial Examiner Spencer: What is the evidence on that point?

Mr. Garver: Well, as a matter of fact, the evidence will show that certain letters, copies of them were sent to the International.

Trial Examiner Spencer: From the local?

Mr. Garver: From the local.

Trial Examiner Spencer: Now, that is the type of thing I wanted you to refer to.

Mr. Garver: And even though it may have been gone over hurriedly, you will actually find a letter in the record in which copies of the entire situation were sent from Mr. Teagle directly to Mr. Petrillo, and then of course Mr. Petrillo was acting pursuant to the rule of not permitting a traveling band to go in without the approval and acquiescence of the local (403) union.

Trial Examiner Spencer: Mr. Petrillo, though, just doesn't happen to be before us. You haven't brought him in here as a Respondent.

Maybe there are no difficulties there from your point of view; I am just raising the question. When I get around to making findings here, and should I agree with you that there has been a violation, in attempting to work out a remedy I am sure that sort of thing is going to stare me right in the face.

If the International, to come back to a more basic thing—you have "causing or attempting to cause." That language is significant in itself, in my opinion. It isn't just a matter of going in and requesting something; they have got to cause or attempt to cause something.

Now, it seems to me that that comes into your case only in that somebody has refused to let certain name bands come in here, because there has been no local arrangement made.

That is where the causing or attempting to cause comes in, I suppose.

Now, do you have a different idea? Would you address yourself to that language?

If there is just a request, I think there is no violation of the act. I think this, now—and you can take this as a statement of what the Examiner thinks; it is the first

statement (404) I have made, I think, as to what I think about the case—I think there has to be something more than just a request. I think that is implicit in the language "cause or attempt to cause."

Mr. Garver: Well, there is something more than a request.

Trial Examiner Spencer: All right; what is it?

Mr. Garver: When the traveling band fails to show up, pursuant to—

Trial Examiner Spencer: All right, I assumed that would be your position. Now, who causes that band to fail to show up?

Mr. Garver: That is the pressure; that is the penalty which the theatre suffers if they don't agree to their conditions.

Trial Examiner Spencer: Well, my point is, who caused it to fail to show up?

Mr. Garver: Pursuant to the rules of the International.

Trial Examiner Spencer: I know, but who did it? Did the local do it, or did the International do it? If the International did it, we can't reach them; you don't have them in here as parties.

Mr. Garver: That may be, and I am frank to say that suggests a subsidiary or perhaps most important problem.

Trial Examiner Spencer: Frankly, it is one that has baffled me right along.

(405) Mr. Garver: My first contention to that question is that the International is acting as the agent of the local in this situation.

Now, let's put it this way: Let us say that the local union had control or an arrangement with some wholly independent company that could tell the traveling bands whether or not to show up.

And if, pursuant to that contract between the local and that independent company that has control over the traveling bands, the traveling bands did not show up, again the local would be responsible, having acted through this agent, through this independent company.

Trial Examiner Spencer: Now, you think that you have proved that the local acted through its International?

Mr. Garver: Yes.

Trial Examiner Spencer: You understand that the proof is on you? You have to prove that. I can't just infer that out of thin air.

Mr. Garver: I believe that the relationship between the local and the International, by virtue of the organizational setup, they are acting together, and the International is acting on behalf of the local, pursuant to that agreement.

Trial Examiner Spencer: Well, of course, there was some rather extensive questioning of one of the witnesses, Mr. Teagle, I believe, as to whether or not he notified the International, (406) and so forth, and as well as I recall, we got nothing but denials, or "I don't remember," or something like that, which is not going to be sufficient to prove your point, unless you have something more.

Mr. Garver: Well, I believe that the record provides a good deal more. In fact, I recognize that part of Mr. Teagle's testimony, from his testimony as not tending to establish the direction to the International, but the inference to be drawn from all the evidence before you is contrary-wise, namely that the International acted pursuant to advice and clearance from the local union.

Inasmuch as you have raised that question, Mr. Examiner, I take it there is a question of whether or not perhaps in a situation like this the International ought to be specifically named?

Trial Examiner Spencer: Well, you understand that is not within my jurisdiction to state who should be named as Respondents. I am just thinking about a remedy, where the International is not named.

I may say that I agree with your position, let's say, or agreed with your position and ordered the local to cease and desist from such practices. Where would that prevent the International from continuing to refuse to let traveling bands play in the theatre?

Just to give you a rather practical example; I don't want (407) to take up too much of your time, here; it is just



something that occurred to me and I thought you might be able to help me.

Mr. Garver: I do want to address myself to that matter, however. I don't want to be in any position at all of conceding—perhaps I did speak too quickly—of in any way conceding that the American Federation of Musicians is not named as party.

As a matter of fact, it is named—"American Federation of Musicians"—Local 24 of Akron, Ohio. The International is named, and the local is named, for all practical purposes. Certainly, the local is the agent of the International, and service upon the local is certainly, to my mind, a service upon the International.

It is very difficult to know where to draw the line between them.

Trial Examiner Spencer: Well, you are seriously arguing, now, that you have named the International as a separate legal entity, as a Respondent in this case?

Mr. Garver: Well, I would want to reserve final thinking on that proposition. I don't want to be in the position, at least in this argument, of conceding that they are not named.

Trial Examiner Spencer: I appreciate that, Mr. Garver.

Now, Mr. Garver, when I ask pointed questions of counsel in oral argument, I assume that counsel knows that I am asking those questions to get enlightenment, and not to reflect my (408) point of view, and your suggestion to the contrary, I resent and I resent deeply, and it is the first time I have ever had any counsel appear before me to suggest in his oral argument that I had formed some views in the case as early as the time when I was listening to the oral argument.

Mr. Garver: Well, if there was anything in my remarks by way of inadvertence that gave you that thought, I certainly want to apologize for them.

I was unaware that I was—just in the flow of my language, I may have said something which seemed to give that impression, but it was certainly not my intention at all.



Trial Examiner Spencer: That is perfectly all right. I do want all parties to understand that at this moment my mind is completely open to all issues in the case.

Would you like to make your statement now?

Mr. Rappaport: Yes.

May I attempt to clear up the last point, first? I think it is a well recognized rule that a court or a judge, in which capacity you are sitting as Examiner, can believe all the evidence, any of it, or try to harmonize it, and can draw certain conclusions of fact from such evidence as has been presented.

Now, there are letters in evidence here that definitely indicate and state over the signature of Mr. Petrillo that they have "been advised by the local union."

(409) Trial Examiner Spencer: You have two documents, don't you? You have one letter which has been received, and you have a copy of a telegram on which I have thus far reserved ruling. Is that correct?

Mr. Rappaport: That is right.

Now, you have the evidence of Mr. Gamble, to the effect that he was told by Mr. Teagle in so many words that the Eberly show would not be permitted to play unless the Palace Theatre met their demands.

Trial Examiner Spencer: The Eberly show, that went back to about what date?

Mr. Rappaport: 1947.

Trial Examiner Spencer: Subsequent to August 22, was it, in 1947?

Mr. Garver: Yes, sir.

Mr. Rappaport: Yes, that was in October, 1947.

Now, the court can draw its own conclusions from that testimony. Nobody is in a position to compel an adverse witness—and these gentlemen certainly are adverse in their interests—to admit that they demanded or requested of the International that they stop these shows.

There isn't any way that we can delve into their hearts or into their minds and get them to make any such admissions as that, if they don't want to make them.

Trial Examiner Spencer: Yes.

Mr. Rappaport: But the court can certainly conclude, from (410) all the evidence and all the circumstances that have been submitted to him, that that must have been the case, or the International would not have moved.

Here are local unions throughout the United States, in almost every city of any size, and we know, as a matter of practice, and a matter of practical knowledge, that an International doesn't work and doesn't step into Akron, or into Cleveland, or into Indianapolis, or any place else without somebody starting the ball rolling, and who would start it rolling? That is the local.

Now, that is a conclusion that this Examiner can definitely reach from the testimony that has been submitted, without any admission directly on the part of the secretary and the business agent or the president that they did communicate.

As far as I am concerned, I want to be perfectly fair to these gentlemen, but I just can't conceive, on the basis of this evidence, of anything else having happened, than that the International was notified; that as a result of such notification, these engagements were cancelled. I think it stands out as clearly as anything does in this case.

Trial Examiner Spencer: I didn't intend to indicate the evidence wasn't there; I merely asked counsel to point to it.

Mr. Rappaport: Well, that is what I am trying to do.

Now, there is another thing on that very proposition, and that is this: Without the International organization in, (411) what sort of order could you make in case you find in our favor?

This much-discussed Article 18, Section 4, provides that except with the consent of the local, no traveling band shall appear unless a local orchestra is engaged.

Now, then, if there is a cease and desist order issued against the locals, then they can't object to the appearance of a traveling band in Akron, and there doesn't need to be any order issued against the International.

In other words, if they comply with that cease and desist order to stop it, and to prevent them from stopping the band from coming in, then that amounts to a consent,

and the International will not interfere, just as it did not interfere for seven performances testified to by Mr. Gamble, after July 2, 1947.

There were seven appearances of bands in Akron where there was no local employment, and no pay-off, no standby, and the International did not move. The Examiner may assume from all this testimony that there will be no movement and no interference on the part of the International, if a proper order is issued against the local, by reason of that particular paragraph in their statutes.

Now, when all the dust is blown away—and there has been a good deal of dust thrown around in these three days—there are certain things that stand out just as clearly as (412) they can. I think the evidence supports these facts that can be found, that this theatre was operating a picture policy; that for a number of years it brought in traveling bands and paid off a local orchestra of nine men who did no work, excepting on one occasion when they say they were called in to do some work, and on another occasion when the performance was wholly local, and when they were employed.

Trial Examiner Spencer: I think that part of the record is fairly clear. That all pre-dates Taft-Hartley, however.

Mr. Rappaport: That is clearly feather bedding.

Trial Examiner Spencer: Well, that pre-dates Taft-Hartley, you understand, and in that period of time was perfectly legal.

Mr. Rappaport: That is correct. Then there is a period after Taft-Hartley when there was no interference, and in my judgment, what I think was happening, and what I think the Examiner definitely can conclude, they were trying to find some way to evade the effects of the Taft-Hartley Law, so for these months when these seven bands appeared, nothing happened, and they were played without any interference.

Then began the interference. Then the demand was made, "We want employment."

Now, let's point out, if we can, just wherein lies the difference between what they are demanding today and

what they definitely demanded and received prior to the enactment (413) of the Taft-Hartley Law.

Trial Examiner Spencer: Just as a preface to that statement, would you state at what point you think a violation first occurred?

Mr. Rappaport: The moment they stopped the Eberly show.

Trial Examiner Spencer: That is where you think the violation first occurred?

Mr. Rappaport: Yes, and when they began to make the demands upon us that we could not play stage bands unless we employed a local band.

Now, the stopping of the Eberly show was merely a concrete evidence of the enforcement or the carrying out of their threat. They had made the threat all the time, and Mr. Light admitted on the stand that what they wanted, at the time a stage band appeared, they wanted an orchestra in the pit.

Now, the evidence shows that prior to that time, during the pay-off system, or the standby orchestra system, they of course said, "Yes, we were always willing to work," and they gave you their story of their rehearsing on the stage and so forth. Of course, they couldn't refuse to work if they had been asked to work.

But isn't it significant that throughout that period of three years, when they were being paid, they were not asked to work? They were not given an assignment of any kind to furnish any music in that theatre.

(414) Now, isn't that of extreme significance in this case? Doesn't it prove that if their services were not needed at that time, when they were being paid, they are certainly not needed now?

Now, they have altered their position only in one respect, and it is a clever thing that the International concocted in this picture. Up to that time, their Section 4, Article 18, gave them the right, because there was no law to stop it, to demand so-called standby orchestras and demand payment, and they enforced it.

Now, that was stopped. Now, the question was, "How can we circumvent that?"



The only difference they made, and the only difference between their stand today and then is this: They say, "We cannot, under the Taft-Hartley Law, and we will not, under the Taft-Hartley Law, accept payment without performing some kind of work. Therefore, we ask you to create some work for us."

Now, that is the only difference there is between the situation today and what it was in those days.

Trial Examiner Spencer: Well, you think that is not significant that they now ask for work, for services which they expect to render?

Mr. Rappaport: I am going to get to that in just a moment.

Trial Examiner Spencer: That seems to me to be the very (415) heart of this case.

Mr. Rappaport: There is a difference between "work" and "services."

Trial Examiner Spencer: I believe "services" is word used in the statute.

Mr. Rappaport: Exactly. That is what I want to get to, and I want to read this little clause again, because some of it is liable to escape us in the heat of argument: "To cause or attempt to cause an employer to pay or deliver or agree to deliver or agree to pay or deliver any money or other thing of any value in the nature of an exaction,"—and Mr. Taft has emphasized that in his arguments to the Senate a good deal—"In the nature of an exaction for services which are not performed or are not to be performed."

Now, it doesn't say "work." It doesn't say that; it says, "services."

Now, what is a service? If they demand that we put an orchestra in that pit, that doesn't do us one particle of good, that as a matter of fact we don't want there, and that, as Mr. Gamble testified, is distinctly harmful to a show when there is a traveling band, that is not a service.

That is an offer to do something, to work, but that is not a service to the employer. In fact, it is a disservice.

Trial Examiner Spencer: On the illustration that you give, I would be inclined to agree with you, that if they



cause or (416) attempt to cause you to employ the orchestra to sit in the pit, as you say, while the name band is on the stage, and that is all they are going to do, I would be inclined to accept that as a violation of the Act.

Mr. Rappaport: All right. Mr. Light testified that one of their demands was that every time that a stage band appeared, their orchestra was to come in to the pit and do some playing, either a chaser or an overture, or something else that we didn't want, that was not a service to us, but a disservice.

He also testified that they wanted to do something else. They wanted to accompany the acts that appeared on that stage and came in with a traveling band. That was a disservice, because it would have disrupted our stage show in every instance, and he admitted that all of that was explained to him in the conference on May the 8th.

So that all that they have offered to do has been distinctly a disservice, and not a service, and I want to emphasize that word "service," because I think it was used advisedly in the act, and is of the greatest significance in this clause.

If it had said, "work," it might be different, because you could have any kind of work. But it must be a service to the employer.

Now, what is a service? I didn't have any dictionary handy. Fortunately, Mr. Garver had looked the matter up. Now, it can mean several different things, but this is what it (417) means in this instance: "Labor performed in the interest and under the direction of others. Any work done for the benefit of another. The act of helping another or promoting his interest in any way, hence, also, a benefit or advantage conferred, or use and advantage in general."

That is what a service is. Now, whenever you try to force something on to somebody that is not of any advantage to him, that is not of any benefit to him, according to the Webster definition, it is not a service.

So this was not a service that they offered us. They offered to do something, to perform something, which we didn't want.

Now, the only difference—and I again emphasize—the only difference between the situation today and what it was prior to the enactment of this law is the fact that they refuse now to accept payment without some semblance of doing something.

Let me illustrate again how it is a disservice. You can't choke too much music and too many different kinds of music down the throats of an audience. You hire a stage band because of its national reputation, and because it plays for a certain length of time.

Now, there are so many men there in that band, yet this union comes along and says, "You must hire nine more men to sit in that pit and fiddle or blow or whatever it is, somewhere along the line." (418) That is too much music for one show, we contend. Now, we know better what is good for the public, or what the public will buy, I think, than even the union does, although I am inclined to think that honestly they would admit that is true.

On the other hand, they say, "Well, why don't you take us and assemble a stage band?"

Well, it is because they have no national reputation; they have no drawing power. They have no acts. They have nothing that they can contribute toward the welfare of this employer. Consequently, they have no service to offer this employer.

Now, let me go a step further—

Trial Examiner Spencer: I am going to have to call time on you very shortly, Mr. Rappaport.

Mr. Rappaport: I am just about through.

I am reminded of this, for example: You employ in a theatre a certain number of cleaning women, and they have done the job, they clean it, maybe there are five or six or eight, or whatever it is. They are organized, there is a union, and they say, "You have got to employ 10 or 12, or twice the number you have got today."

When we ask, "What are you going to do?" They may say, "Why, we will dust, we will take out dust rags and our brooms and so forth, and we will clean up just the same as the other five have done."

Would that be a violation of the act? Isn't that trying (419) to force something on the employer that is not a service to him, that is an injury to him, that is an interference with his business?

Now, this act was passed for the purpose of enabling theatres to operate freely, without interference of any unions.

Trial Examiner Spencer: No, I don't agree to that statement. I don't know what you mean by "Interference," but—

Mr. Rappaport: Well, I mean undue interference.

Trial Examiner Spencer: The unions have a perfect right to negotiate with you in a normal way.

Mr. Rappaport: That is correct. I mean, undue interference or exactions, as the law puts it.

Now, let's see what our situation is: We have told them, and we have it in writing, "We will give you employment whenever we can make use of your services. We have said so to them. We have never changed our position on that.

And that isn't what they want. They are not honestly bargaining or negotiating for employment, but what they are trying to do is to impose something upon us for which we have no use, and which is not a service. That is the gist of this case.

We are perfectly willing and always have been—we have never even gotten to the point where we could discuss scale with them, because our offer, unless we guaranteed to them an equal number of shows, where they would be employed, against (420) those where they might not be employed, why, they wouldn't play ball, and yet we explained to them, and it is in that memorandum of May 8th, that one of the reasons we couldn't do it is because we didn't know whether we could get those shows.

Now, if that happened, supposing we had agreed to their terms and we had brought in 15 stage bands. We would have been obligated to hire local musicians 15 times.

For what? If we couldn't have gotten 15 vaudeville shows, we would have had to put them down in the pit and let them play, which would have interfered with our

business, which would have disrupted it, shortened our program with reference to other things, short subjects or what not, whatever time they took up would be taken from something else that should have been programmed.

Now, that is not a service; that is a disservice, and that is all they have ever offered us is a disservice.

Trial Examiner Spencer: Your definition of service, the balance of the language bothers me a little bit. "Which are not performed and not to be performed."

What does Congress mean by that, if they take your definition of service? It seems to me they could just put a period after the word "service."

Mr. Rappaport: No, it seems perfectly clear to me that if it is not a real service—

Trial Examiner Spencer: Well, if it is not a service, (421) how can they perform it?

Mr. Rappaport: They can't perform a service. They can do something, which would not be performing a service, not constitute a service.

Mr. Light, for example, could go in there and play the drums, but that would be no service to us. That would be an exaction against us. They could have their nine men play different instruments.

Trial Examiner Spencer: Well, I am still not expressing an opinion, because I am merely thinking about this and trying to give enlightenment, but the language there gives me a good deal of concern, because the inference seems to be that they are exacting pay for something that they are not going to do.

Mr. Rappaport: I don't think it is that narrow.

Trial Examiner Spencer: "Services which are not performed or are not to be performed." It seems to me that if it is exacting pay, such as you suggest, to sit in the pit and do nothing, that would be a good illustration. I think that would be services not to be performed or expected to be performed, but when you get into the matter of negotiating with you to actually agree for the performance of service, have you got the same thing?

Now, I just raise the question. Your remarks are interesting, and I—



Name of Leader	Date Pd.	Number Wks	S	Ending	Number Men	Salary	Tax	Misc.
Mark Hansen (Kinney)	3-9 45	4	1-8 45	9	340 00	6 80		
" " (Coca)	3-9 45	4	2-5 45	9	340 00	6 80		
" " (Hepfilds)	3-9 45	4	2-12 45	9	340 00	6 80		
" " (Crotts William)	5-3 45	4	4-23 45	9	340 00	6 80		
" " (Cab Belloway)	5-25 45	4	5-14 45	9	340 00	6 80		
" " (U. Monro)	6-22 45	4	6-11 45	9	340 00	6 80		
" " (P. Ellington)	7-6 45	4	6-25 45	9	340 00	6 80		
" " (Lead Wears)	7-31 45	4	7-16 45	9	340 00	6 80		
" " (Prima)	8-24 45	4	8-6 45	9	340 00	6 80		
" " (Buse)	8-24 45	4	8-20 45	9	340 00	6 80		
" " (Spirak)	9-28 45	4	9-17 45	9	340 00	6 80		
" " (Herman)	10-12 45	4	10-1 45	9	340 00	6 80		
" " (Kaye)	11-16 45	4	10-29 45	9	340 00	6 80		
" " (McGuttye)	11-16 45	4	11-11 45	9	340 00	6 80		
" " (Glen Gray)	1-29 46	4	1-13 46	9	340 00	6 80		
" " (Carle)	2-19 46	4	2-10 46	9	340 00	6 80		
" " (Kinney)	3-18 46	4	3-3 46	9	340 00	6 80		
" " (Cool)	3-18 46	4	3-10 46	9	340 00	6 80		
" " (Dorsey)	5-10 46	4	4-28 46	9	340 00	6 80		
" " (Jones)	6-26 46	4	6-9 46	9	340 00	6 80		
" " (Miller)	6-26 46	4	6-23 46	9	340 00	6 80		
" " (Basie)	7-13 46	4	6-30 46	9	340 00	6 80		

IN THE MATTER OF  
DATE 3/14/50  
BY [Signature]  
WITNESS [Signature]

CASE NO. 848	NATIONAL LABOR RELATIONS BOARD	EXHIBIT NO. 4	(Cool)	2-19 46	4	2-10 46	9	340 00	6 80		
			(Kinney)	3-18 46	4	3-3 46	9	340 00	6 80		
			(Cool)	3-18 46	4	3-10 46	9	340 00	6 80		
			(Dorsey)	5-10 46	4	4-28 46	9	340 00	6 80		
			(Jones)	6-26 46	4	6-9 46	9	340 00	6 80		
			(Miller)	6-26 46	4	6-23 46	9	340 00	6 80		
			(Basie)	7-13 46	4	6-30 46	9	340 00	6 80		
			(Wald)	9-30 46	4	8-18 46	9	340 00	6 80		
			(McKinley)	9-30 46	4	8-25 46	9	340 00	6 80		
			(Kenton)	9-30 46	4	9-8 46	9	340 00	6 80		
			(Long)	9-30 46	4	9-15 46	9	340 00	6 80		
			(Jucker)	9-30 46	4	9-22 46	9	340 00	6 80		
			(Buse)	10-25 46	4	10-6 46	9	340 00	6 80		
			(Pastor)	10-25 46	4	10-13 46	9	340 00	6 80		
			(McIntyre)	10-25 46	4	10-20 46	9	340 00	6 80		
			(Krupa)	1-2-47	4	11-24 46	9	340 00	6 80		
			(Black)	2-7 47	4	1-19 47	9	340 00	6 80		
			(Rey)	2-7 47	4	1-26 47	9	340 00	6 80		
			(Macy)	3-11 47	4	2-23 47	9	340 00	6 80	TER	
			Angel Lombardi (Candy)	4-17 47	4	3-23 47	9	340 00	6 80		
			(Quirk)	4-17 47	4	4-13 47	9	340 00	6 80		
			(Candy)	4-17 47	4	4-27 47	9	255 00	5 10		

Name of Leader	Date Pd	Number Wks	S	Ending	Number Men	Salary	Tax	Misc.
Angel Lombardi (Candy)	2-4-48	4	1-29 47	9	340 00	6 80		
(Lombardi)	2-4-48	3	7-2 47	9	255 00	5 10	TER	







**NEW EMPLOYEES WHO ARE RECEIVING FIRST PAY:**

NAME	AGE	POSITION	SOC. SEC. NO.	SCHOOL CERT. RECD.	GOVT. CERT. RECD.	REMARKS
Herbert Freyman		Usher	274-26-1761			
Louise Semner		Usherette				
Madeline Marines						

### INCREASES IN BASIC RATES:

[illegible]

**EXPLANATION OF OVERTIME:**

N A M E	P O S I T I O N	HOURS	RATE	AMOUNT	REASON FOR OVERTIME
Hill	Cashier	1	.61	.61	over reg. 36 hr. shift
Parsons	"	2	.61	1.22	" " " " "
LeVernina	"	4	.61	2.44	" " 50 " "
Thomas	Rel. "	30	.61	18.30	Relief cashier
Geale	Ch/Serv.	22	.55	12.10	over reg. 40 hr. shift
Gaffner	Doorman	6	.45	2.70	" " " " "
Cole	"	6	.40	2.40	as usher
Dickerson	B.S. #	19	.45	8.55	" "
Lestock	Usher	12	.45	5.40	on deer
Hardy, Jr.	Porter	8	.50	5.00	off reg. 40 hr. shift
Stene	"	29 1/2	.50	14.75	over # " " " "
Venable	"	5	.50	2.50	" " " " "
Young	H/Cleaner	11	.67	7.37	Wk. end business, matrons day off
Myers, Sam	Eng.	3	2.08	6.09	over reg. 48 hr. shift
" James	"	2	1.58	3.12	" " " " "

Name	Position	Rate	Hours	Amount	Notes
Barry, Jr.			29 1/2	.50 14.75	over \$
Shene			5	.50 2.50	" " " "
Venable			11	.87 7.37	Wk. end business, matrons day off
Young	H/Cleaner		3	2.08 6.09	over reg. 48 hr. shift
Myers, Sam	Eng.		2	1.56 5.12	" " " "
" James			2 1/2	.40 1.00	" " 36 " "
Pilot	Matron		1	3.00 3.00	late show Sat. nite
Summers	Oper.		1	3.00 3.00	" " " "
Jones	"		1	3.00 3.00	" " " "
White	"		1	3.00 3.00	cues
Waggoner	"		3	3.00 9.00	RCA Service
Kappel	S/Hand			20.50	18.00 extra shows, 2.50 bldg. platform
Claflin	"			18.00	" " " "
Nicol	"			25.00	" " " "
McGowan	"			20.50	2.50 early show Sun
Anderson	"			18.00	2.50 late show Sat.
Bruner	"			18.00	" " " "
Botts	"			18.00	" " " "

1 Leader  
8 Sidemen 55.00

52.00  
288.00 Stand by band for Freddie Slack

SEPARATION DATA ON ALL EMPLOYEES DROPPED FROM PAY ROLL THIS WEEK:

NAME	POSITION	REASON EMPLOYEE NOT ON PAY ROLL
Leslie Banty	Doorman	sick
John Loweis	Usher	
John Ghaykoski		

6-1-72

(422) Mr. Rappaport: Well, may I say, you are assuming, then, that what they propose to do is a service. Now, by going into the pit, you say they are performing a service.

Trial Examiner Spencer: No, I didn't say that.

Mr. Rappaport: I mean, and playing, of course.

Trial Examiner Spencer: If they went into the pit and played for a performance, it would seem to me to be performing a service.

Mr. Rappaport: What do you mean by "performance," may I ask?

Trial Examiner Spencer: For the entertainment, for your theatre.

Mr. Rappaport: You mean just play an overture or chaser?

Trial Examiner Spencer: No, I don't mean that at all. I am not taking any position as to what this language means; I am just putting out these questions so we can try to see what it means precisely.

I should think that if you engaged them as an orchestra for a performance, to come with vaudeville teams or whatnot, you agreed that they should come in and perform that type of playing, if you don't want to call it service, that would seem to me to be performing a service.

Mr. Rappaport: You are right, but if we engage them to perform with a vaudeville unit, that is a service. Then we have asked them to perform, and if they do perform, there is (423) no violation of this act.

But if they insist, every time we bring in a stage band—and that is very significant; this whole thing revolves around our right to bring in stage bands, traveling stage bands—that we must provide some kind of work for them which we say is not a service to us, then I say that is a service not to be performed, because it isn't a service.

Trial Examiner Spencer: Well, you have stated your position very clearly, and I appreciate your statement, and yours too, Mr. Garver. I thank you very much for the remarks.

Mr. Garver: Mr. Examiner, with respect to the question as to the kind of remedy, I just wanted to add this thought—

Trial Examiner Spencer: I realize the remedies are somewhat within the discretion of the Board, but we think about those things, of course.

Mr. Garver: I just want to add this thought for what it might be worth: The record shows, for example, that there was a point in which the union changed its position from ins ad of one performance for each traveling band, that they would agree to having one performance for every two traveling bands.

That shows, it seems to me, that it was within their discretion locally to decide upon what they were willing to agree as to whether or not they were going to insist upon a performance or insist upon this arrangement for each traveling band.

(424) They could have done it for 50 per cent, they could have done it for 25 per cent, for 10, and for none. In other words, it is up to them to decide as to whether or not they are going to take action to insist upon being used in some way for each traveling band.

So, if there were an order which directed them to cease and desist from insisting upon such conditions, that would stop it at that level.

Then, of course, if, independent of their notifying—for example, if they were under contract with theatres locally, or were bargaining, they wouldn't be able to ask for that condition if there were such an order.

Trial Examiner Spencer: You may well have a perfectly effective remedy. I was just turning it over in my mind.

Mr. Rappaport: I think that there is something else that you will find if you read these constitutions. These locals are pretty much autonomous, excepting certain national things to which they have to conform, and in a situation of this sort they are autonomous and act definitely in that manner.



Trial Examiner Spencer: Whether they are or not, I am agreeable to this complaint going against the local, and I think the remedy would have to be directed to the local.

Mr. Garver: Just a brief remark on another point: It seems to me that question along the lines you were just asking Mr. Rappaport, about the work and services, that that has to be (425) studied essentially through an analysis by way of whether or not the present demands are a subterfuge. I mean, an inference has to be drawn. It is a question of subterfuge.

Trial Examiner Spencer: I agree. If these proposals are not put forth in good faith, of course, that throws a different light on it.

Mr. Garver: And it has to be taken in the light of history and background, and so on.

Trial Examiner Spencer: Now, Mr. Kriger, you have stated that you want to file a brief, and I assume that you will not, therefore, get in oral argument?

Mr. Kriger: Not at this time, it is now quarter after five.

Trial Examiner Spencer: I shall expect to get a brief from you, however, and I will say further that if either of the other gentlemen care to file briefs, it is open to you, and I will be very happy to receive them. You may want to file a memorandum supplementing what you have stated orally.

There is a certain novelty about this case; it is not a case where I can run through the Board's decisions and get a lot of precedents.

So, if there is a case where briefs are particularly invited, why, this is that type of case. It is rather difficult, and I have no doubt I will struggle with it quite a bit.

(426) Mr. Rappaport: I take it Mr. Kriger will furnish us with copies of his brief?

Mr. Kriger: I will be glad to, and I hope to write an extensive memorandum on it. I hope the Examiner will bear with me if it is a little long.

Trial Examiner Spencer: As long as you don't ask for too much time I will probably bear with you, Mr. Kriger.



If there is nothing further at this time, I will close the hearing. The hearing is closed with the provisos previously stated, with reference to the receipt of General Counsel's Exhibit No. 13.

(Whereupon, at 5:15 o'clock, p.m. Thursday, March 16, 1950, the hearing in the above-entitled matter was closed.)

## **GENERAL COUNSEL'S EXHIBITS 1-A TO 1-I, INCL.**

### **PRINTER'S NOTE:**

General Counsel's Exhibits 1-A to 1-I, inclusive, comprise the pleadings, and appear at pages 1 *et seq.*

**GENERAL COUNSEL'S EXHIBIT 2.****Stipulation.**

Gamble Enterprises, Inc. is a Washington corporation, with its principal office in Suite 1810, RKO Building, New York City. The company operates two theatres in Ohio, one of which is the Palace Theatre in Akron, and two theatres in Pennsylvania. It also holds fifty per cent of the stock of Standard Theatres Corporation, which operates twenty-six theatres in Wisconsin. The remainder of the stock is owned by Mr. James Costen of Chicago, Illinois. Gamble Enterprises, Inc. also holds fifty per cent of the stock of Greater Indianapolis Amusement Company, which operates four theatres in Indianapolis, Indiana. The remaining fifty per cent of the stock is owned by the Fourth Avenue Amusement Company of Louisville, Kentucky.

During the year 1948, the Palace Theatre in Akron paid film rentals in the amount of \$140,570.85, and in 1949, up to May 19, 1949, it has paid a film rental of \$46,001.27. All of the films are rented through the Cleveland branch offices of nine national distributors, including among others, Columbia Pictures Corp., Paramount Pictures, Inc., RKO Radio Pictures, Inc., and Republic Pictures Corp. Each of these distributors has thirty-one branches in various cities of the United States. The money paid for film rental represents, roughly, thirty per cent of the Palace Theatre's gross income.

During the year 1947, the Palace Theatre presented fifteen stage shows, consisting of traveling bands and talent, for which the sum of \$73,024.21 was paid, and in 1946 the theatre presented nineteen stage shows, for which the sum of \$89,556.04 was paid. With one exception, all of these stage shows were contracted for on a percentage basis.

During the year 1948, the Palace Theatre purchased supplies, such as advertising materials and equipment, from outside the State of Ohio, in the amount of \$4,478.37, and during the year 1949, to May 19, 1949, such purchases

from outside the State totalled \$958.79. The purchases represent, roughly, fifty per cent of all purchases for such materials made by the theatre.

Gamble Enterprises, Inc. pays annual film rentals for all of its theatres to national distributors in an amount in excess of \$1,500,000.00.

Gamble Enterprises, Inc. bought out a chain of six theatres in March of 1947, operated by Monarch Theatres, Inc. The Palace Theatre was one of this chain. Some time in 1947, Monarch Theatres, Inc. was dissolved and since that date the Palace Theatre has been operated directly by Gamble Enterprises, Inc.



## THEATRE PAY ROLL

## RECAPITULATION

COMPANY:		RECAPITULATION				
		BASIC SALARY	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS FED. O. A.    FED. I. T.	CASH PAID
THEATRE:	0. No					
CITY						
WEEK ENDING:	2/1/31 7-					
APPROVED FOR PAYMENT						
AMOUNT PAID OUT BY:	MANAGER					
		TOTAL PAID				
		SHORT OR OVER IN CASH THIS WEEK				

C.E. 6-193

AMOUNT OF ESTIMATED PAY ROLL CHECK NO.											
NAME	FED. I. T. EXEMPTIONS	POSITION	HOURLY WORKERS		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
			HRS.	RATE	HRS.	AMOUNT			FED. O. A.	FED. I. T.	
Mark Houser		2 Leader					52.00	52.00	.52	5.50	46.18
Paul Kares		0 Sideman					56.00	56.00	.56	6.20	59.44
Reginald Light		1 "					56.00	56.00	.56	4.40	51.24
Henry Chernin		5 "					56.00	56.00	.56	-	55.84
Robert Loss		4 "					56.00	56.00	.56	-	55.84
Mark Houser, Jr.		1 "					56.00	56.00	.56	4.40	51.24
Ralph Harren		2 "					56.00	56.00	.56	2.60	53.04
Roger Schaeffer		2 "					56.00	56.00	.56	2.60	53.04
John Marvin		5 "					56.00	56.00	.56	2.60	53.04
Total							560.00	560.00	5.40	26.50	510.50

## NEW EMPLOYEES WHO ARE RECEIVING FIRST PAY:

NAME	AGE	POSITION	SOC. SEC. NO.	SCHOOL CERT. RECD.	GOVT. CERT. RECD.	REMARKS

INCREASES IN BASIC RATES:

NAME	POSITION	OLD RATE		NEW RATE		AUTHORITY
		AMOUNT	PER	AMOUNT	PER	

EXPLANATION OF OVERTIME:

NAME	POSITION	HOURS	RATE	AMOUNT	REASON FOR OVERTIME
Hilly	Cashier	1	.61	.61	over reg. 38 hr. shift
Parsons	"	5	.61	1.85	" " " "
LoPensina	"	2	.61	1.22	" " 30 " "
Thomas	Rel.	29	.61	17.69	Relief cashier
Goals	Ch/Serv.	24	.55	13.20	over reg. 40 hr. shift
Hunt	Doorman	6	.40	5.20	as usher
"	"			.40	to correct error payroll 5/12
Cole	"	25	.45	10.35	as usher
Beaty	"	6	.50	5.00	over reg. 50 hr. shift
Dickerson	B.S. "	15	.45	5.85	as usher
Ruby	Usher	12	.50	6.00	on door
Hardy, Jr.	Porter	1	.50	.50	off reg. 50 hr. shift
Stone	"	25	.50	11.50	over " " "
Young	H/Cleaner	11	.67	7.37	Wk. end business, Matrons day off
Myers, Sam	Eng.	8	2.08	6.09	over reg. 48 hr. shift

Name	Position	Days	Rate	Notes
Hardy, Jr.	Porter	1	.50	.50 off reg. 80 hr. shift
Stone	"	25	.50	11.50 over " " "
Young	H/Cleaner	11	.67	7.57 Wk. and business, Matrons day off
Myers, Sam	Eng.	8	2.05	6.08 over reg. 48 hr. shift
" James	"	2	1.55	5.12 " " "
Pilot	Matron	2 1/2	.40	1.00 " " 36 " "
Jones	Oper.	2 days	15.00	26.00 off reg. shift
"	"	1	3.00	3.00 late show Sat. nite
White.	"	1	3.00	3.00 " " "
Hollins	"	1 day	15.00	13.00 worked for Jones
Goodell	"	"	15.00	13.00 " " "
Kappel	S/Hand			20.50 18.00 extra shows, 2.50 bldg. platform
Glaflin	"			18.00 " " "
Hical	"			23.00 " " "
McGowan	"			20.50 " " " 2.50 early Sunday
Pomeroy	"			18.00 " " " 2.50 late Saturday
Hermann	"			18.00 " " "
Bruner	"			18.00 " " "
1 Leader			52.00	
8 Sidemen @ \$26.00			208.00	Stand by band for Bob Crosby

SEPARATION DATA ON ALL EMPLOYEES DROPPED FROM PAY ROLL THIS WEEK:

NAME	POSITION	REASON EMPLOYEE NOT ON PAY ROLL



THEATRE PAY ROLL

RECAPITULATION

COMPANY:		RECAPITULATION						
		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
						FED. O. A.	FED. I. T.	
THEATRE:	Palace	NO. 12	1028.87	106.26	1135.13	11.39	90.40	1033.34
CITY:	Akron	12A	364.00	12.00	376.00	3.76	40.40	332.84
WEEK ENDING:	1/29/47	5	358.11	112.50	470.66	4.72	50.40	415.54
APPROVED FOR PAYMENT:		7		340.00	340.00	3.40	26.30	310.30
MANAGER								
AMOUNT PAID OUT BY:								
		TOTAL PAID	1751.03	570.76	2321.79	25.27	207.50	2091.02
		SHORT-OR OVER IN CASH THIS WEEK						55.87
		AMOUNT OF ESTIMATED PAY ROLL CHECK NO.	11005					2146.89

NAME	FED. I. T. EXEMPTIONS	POSITION	HOURLY WORKERS		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
			HRS.	RATE	HRS.	AMOUNT			FED. O. A.	FED. I. T.	
Sid Holland		3 Mgr.				135.00		135.00	1.33	19.10	114.55
Paul M. Grubb		2 A/Mgr.				80.00		80.00	.80	10.50	68.70
Conrad Reining		2 2nd A/Mgr.				42.50		42.50	.45	3.60	38.47
Bette Butler		1 Bkkr.				45.00		45.00	.45	6.00	38.55
Sub Total #12						302.50		302.50	3.03	39.20	260.27
Dorothy Gillespie		1 H/Cashier	51	.65		20.15		20.15	.20	1.70	18.25
Elizabeth Hill		1 Cashier			56	21.96	7.61	22.57	.25	2.00	20.34
Elaine Parsons		1 "			56	21.96	1.22	23.18	.25	2.20	20.73
Mary LoPensina		3 "			50	18.50	2.44	19.74	.21	-	20.53
Marie Thomas		1 Rel. "	43	.61			26.23	26.23	.26	2.70	23.27
Sub Total #12						62.57	30.50	112.87	1.13	6.60	105.14
Adam G. Goels		4 Ch/Serv.			40	22.00	12.10	34.10	.34	-	33.76
Harry Cole		1 Doorman	26	.45		11.70	4.00	15.70	.16	.80	14.74
Jimmy Cunningham		1 "	24	.45		10.80		10.80	.11	-	10.69
Dick Dickerson		1 B. S. "	32	.50	50	15.00	8.20	23.20	.23	2.20	20.77
Joseph Ellis		1 Usher	20	.40		8.00		8.00	.08	-	7.92
Herbert Freyman		1 "	4	.40		1.60		1.60	.02	-	1.58
Tom Guinter		1 "	13	.40		5.20		5.20	.05	-	5.15
Walter McDaniels		1 "	32	.45		14.40		14.40	.14	.70	13.56
Earl David		1 "	23	.40		9.20	5.40	14.60	.15	.70	13.75
Kenneth Rhoades		2 "	30	.45		27.00		27.00	.27	1.00	25.73
Glyde Rhodes		1 "	39	.40		15.60		15.60	.16	.80	14.64
Jim Ruby		1 "	37	.45		16.65		16.65	.17	1.00	15.48
Bill Sawders		1 "	33	.45		15.75		15.75	.16	.80	14.79
Catherine Allruts		1 "	35	.40		14.00		14.00	.14	.70	13.16
Jean Harris		1 "	40	.40		16.00	1.00	15.00	.15	.80	14.05
Madeline Marinos		1 "	17	.40		6.80	8.10	14.90	.15	.70	14.05
Betty Syler		1 "	28	.45		12.60		12.60	.13	.30	12.17
Lewana Thompson		1 "	37	.40		14.80		14.80	.15	.70	13.95
Doris Watkins		1 "	34	.40		13.60		13.60	.14	.50	12.96
Louise Zenner		1 "	17	.40		6.80	8.10	14.90	.15	.70	14.05

Madeline Marinos	1	"	17	.40		6.80	8.10	14.90	.15	.70	14.05
Betty Syler	1	"	28	.45		12.60		12.60	.13	.30	12.17
Lewana Thompson	1	"	37	.40		14.80		14.80	.15	.70	13.95
Doris Watkins	1	"	34	.40		13.60		13.60	.14	.50	12.96
Louise Zenner	1	"	17	.40		6.80	8.10	14.90	.15	.70	14.05
Sub Total #12						257.60	44.90	302.40	3.05	12.40	286.95
Sam Hardy, Jr.	3	Porter			50	15.00	2.50	12.50	.13	-	12.37
Willie McAndrews	3	"			50	15.00	1.50	17.50	.18	-	17.32
Eugene Stone	1	"			50	15.00	15.00	30.00	.30	3.40	26.30
Granville Venable	4	"			50	15.00	3.00	18.00	.18	-	17.82
Sub Total #12						60.00	18.00	78.00	.79	3.40	73.81
Rose Young	1	H/Cleaner			50	20.00	7.37	27.37	.27	2.90	24.20
Katie Pinches	1	Cleaner			50	20.00		20.00	.20	1.70	18.10
Katie Vlcek	1	"			50	20.00		20.00	.20	1.70	18.10
Julia Demiter	3	"			50	20.00		20.00	.20	-	19.80
Anna Bilandzia	3	"			50	20.00		20.00	.20	-	19.80
Elis. Kedra	1	"			50	20.00		20.00	.20	1.70	18.10
Henry Folk	2	N/Watch.	42		35.00			35.00	.35	2.40	32.25
Homer Dean	1	S/Police	34		40.50	6.75		33.75	.34	3.90	29.51
Sub Total #12						195.50	.62	196.12	1.96	14.50	179.66
Samuel Myers	4	Eng.	48		65.00	8.12		73.12	.73	5.20	67.19
James R. Myers	1	"	48		50.00	3.12		53.12	.53	7.30	45.29
Sub Total #12						115.00	11.24	126.24	1.26	12.50	112.48
Hasel Pilot	3	Matron	56		16.00	1.00		17.00	.17	-	16.83
Total #12						1028.87	106.26	1135.13	11.39	90.40	1033.34
L. M. Summers	4	Oper.				91.00	3.00	94.00	.94	8.10	85.96
Harry Jones	5	"				91.00	3.00	94.00	.94	7.10	85.96
R. A. White	2	"				91.00	3.00	94.00	.94	13.10	79.96
Charles Waggoner	3	"				91.00	3.00	94.00	.94	11.10	81.96
Sub Total #12A						364.00	12.00	376.00	3.76	40.40	332.84
Wm. Kappel	2	S/Hand				69.08	17.50	86.58	.87	11.60	74.11
Harold Clafflin	3	"				69.08	15.00	84.08	.84	9.20	74.04
Wm. Nicol	2	"				44.00	17.50	61.50	.62	8.80	54.08
John McGowan	2	"				44.00	17.50	61.50	.62	8.80	54.08
John Betts	3	"				44.00	15.00	59.00	.59	4.70	53.71
Wm. Hall	1	"				44.00	15.00	59.00	.59	8.40	50.01
Dalbert Bruner	4	"				44.00	15.00	59.00	.59	2.90	55.51
Total #5						358.11	112.50	470.66	4.72	50.40	415.54

NATIONAL LABOR RELATIONS BOARD  
CASE NO. 823  
IN THE MATTER OF GARTLE  
DATE 3/1/50  
WITNESS  
EXHIBIT NO. 7  
OFFICIAL REPORTER

TOTALS

NOTE: PLEASE FILL OUT ALL SCHEDULES ON BACK OF THIS SHEET



## NEW EMPLOYEES WHO ARE RECEIVING FIRST PAY:

NAME	AGE	POSITION	SOC. SEC. NO.	SCHOOL CERT. RECD.	GOVT. CERT. RECD.	REMARKS
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## INCREASES IN BASIC RATES:

NAME	POSITION	OLD RATE		NEW RATE		AUTHORITY
		AMOUNT	PER	AMOUNT	PER	
Walter McDaniels	Usher	.40	hr.	.45	hr.	has been here 3 months

## EXPLANATION OF OVERTIME:

NAME	POSITION	HOURS	RATE	AMOUNT	REASON FOR OVERTIME
Hill	Cashier	1	.61	.61	over reg. 36 hr. shift
Parsons	"	2	.61	1.22	" " " " "
LePensina	"	4	.61	2.44	" " 30 " "
Thomas	Rel. "	45	.61	26.25	30 hrs. relief, 15 hrs. counting March of Dimes collection
Geals	Ch/Serv.	22	.55	12.10	over reg. 40 hr. shift
Cole	Doorman	10	.40	4.00	as usher
Dickerson	B.S. "	2	.50	1.00	over reg. 30 hr. shift
"	"	16	.45	7.20	as usher
Ravid	Usher	12	.45	5.40	on door
Harris	Usherette			1.00	to correct error overpayment 1/15/47
Marines	"	18	.45	8.10	on door
Zenner	"	18	.45	8.10	" "
Hardy, Jr.	Porter	5	.50	2.50	off reg. 30 hr. shift
"	"	5	.50	2.50	over " " " "
Marines	"	18	.45	8.10	on door
Zenner	"	18	.45	8.10	" "
Hardy, Jr.	Porter	5	.50	2.50	off reg. 30 hr. shift
McAndrews	"	5	.50	2.50	over " " " "
Stone	"	50m	.50	15.00	" " " " "
Venable	"	6	.50	3.00	" " " " "
Young	H/Cleaner	11	.87	7.57	wk. end business, Matrons day off
Dean	S/Police	9	.75	6.75	off reg. 34 hr. shift - sick
Myers, Sam	Eng.	4	2.03	8.12	over " 48 " "
" James	"	2	1.56	3.12	" " " " "
Pilot	Matron	2 1/2	.40	1.00	" " 36 " "
Summers	Oper.	1	3.00	3.00	sues
Jones	"	1	3.00	3.00	late show Sat. nite
White	"	1	3.00	3.00	" " " " "
Waggoner	"	1	3.00	3.00	generator repair
Kappel	S/Hand			17.50	15.00 extra shows, 2.50 bldg. platform
Clafflin	"			15.00	" " " " "
Rical	"			17.50	" " " " "
McGowan	"			17.50	" " " " 2.50 late Sat. nite
Botts	"			15.00	" " " " "
Ball	"			15.00	" " " " "
Brumer	"			15.00	" " " " "
1 Leader				52.00	
8 Sidemen				288.00	stand by band for Alvino Ray

## SEPARATION DATA ON ALL EMPLOYEES DROPPED FROM PAY ROLL THIS WEEK:

NAME	POSITION	REASON EMPLOYEE NOT ON PAY ROLL
Arthur Little	Porter	Resigned
Wendell Lestock	Usher	week off without pay
John Gayher	"	sick
Harry Offener	"	resigned

G.E. 7-p. 2

# THEATRE PAY ROLL

COMPANY:

## RECAPITULATION

	BASIC SALARY	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
				FED. O. A.	FED. I. T.	
THEATRE:						
CITY:						
WEEK ENDING:						
APPROVED FOR PAYMENT:						
MANAGER:						
AMOUNT PAID OUT BY:						
	TOTAL PAID					
	SHORT OR OVER IN CASH THIS WEEK					
	AMOUNT OF ESTIMATED PAY ROLL CHECK NO.					

G.E. 9-14-3

NAME	FED. I. T. EXEMPT- IONS	POSITION	HOURLY WORKERS		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
			HRS.	RATE	HRS.	AMOUNT			FED. O. A.	FED. I. T.	
Ange Lombardi		2 Leader					52.00	52.00	.52	5.50	46.18
Delbert Boyer		1 Sideman					36.00	36.00	.36	4.40	31.24
Harry Clark		3 "					36.00	36.00	.36	.80	34.84
Reginald Light		1 "					36.00	36.00	.36	4.40	31.24
John Marvin		3 "					36.00	36.00	.36	.80	34.84
Willmer Mathias		3 "					36.00	36.00	.36	.80	34.84
Robert O'Dall		1 "					36.00	36.00	.36	4.40	31.24
James Scriggy		1 "					36.00	36.00	.36	4.40	31.24
Glenn Tripp		4 "					36.00	36.00	.36	-	35.64
Total #7							340.00	340.00	5.40	25.80	311.80

## THEATRE PAY ROLL

## RECAPITULATION

COMPANY:

BASIC  
SALARYEXTRAS &  
OVERTIMETOTAL  
EARNINGS

DEDUCTIONS

FED. O. A. FED. I. T.

CASH PAID

THEATRE:

No.

CITY:

WEEK ENDING:

APPROVED FOR PAYMENT:

MANAGER

AMOUNT PAID OUT BY:

TOTAL PAID

SHORT OR OVER IN CASH THIS WEEK

AMOUNT OF ESTIMATED PAY ROLL CHECK NO.

NAME	FED. I. T. EXEMP- TIONS	POSITION	HOURLY WORKERS		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
			HRB.	RATE	HRB.	AMOUNT			FED. O. A.	FED. I. T.	
Mark Houser		2 Leader					52.00	52.00	.52	5.50	46.18
Paul Kares		0 Sideman					36.00	36.00	.36	6.29	29.44
Reginald Light		1 "					36.00	36.00	.36	4.40	31.24
Henry Chernin		5 "					36.00	36.00	.36	-	35.64
Robert Lese		4 "					36.00	36.00	.36	-	35.64
Mark Houser, Jr.		1 "					36.00	36.00	.36	4.40	31.24
Ralph Harren		2 "					36.00	36.00	.36	2.69	33.04
Roger Schaeffer		2 "					36.00	36.00	.36	2.69	33.04
John Marvin		3 "					36.00	36.00	.36	.80	34.84
Total 47							340.00	340.00	5.40	26.39	310.29



# THEATRE PAY ROLL

RECAPITULATION

COMPANY:

Akron Palace Theatre Corp.

THEATRE: Palace

CITY: Akron

WEEK ENDING: 2/26/47

APPROVED FOR PAYMENT

12	1057.62	92.95	1150.55	11.51	90.60	1048.44
12A	584.00	100.00	464.00	4.64	55.70	405.66
5	358.16	136.00	494.16	4.95	54.80	434.41
7		540.00	540.00	5.40	25.70	512.90

AMOUNT PAID OUT BY:

TOTAL PAID 1779.78 668.95 2448.71 24.50 222.80 2201.41

OVER IN CASH THIS WEEK 35.42

AMOUNT OF ESTIMATED PAY ROLL CHECK NO. 11119 2256.65

NAME	POSITION	HRS.	RATE	BASIC SALARY	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS FED. O. A.	DEDUCTIONS FED. I. T.	CASH PAID
Sid Holland	3 Mgr.			135.00		135.00	1.55	19.10	114.55
Paul M. Grubb	2 A/Mgr.			80.00		80.00	.80	10.50	68.70
Conrad Reining	2 2nd A/Mgr.			42.50		42.50	.45	5.60	38.47
Bette Butler	1 Bkkr.			45.00		45.00	.45	6.00	38.55
Sub Total #12				302.50		302.50	3.25	39.20	260.27
Dorothy Gillespie	1 H/Cashier	31	.65	20.15		20.15	.20	1.70	18.25
Klizabeth Hill	1 Cashier	36	.61	21.96	.61	22.57	.25	2.00	20.34
Elaine Parsons	1 "	36	.61	21.96	1.22	23.18	.25	2.20	20.75
Mary LePensina	3 "	30	.61	18.30	3.66	21.96	.22	-	21.74
Marie Thomas	1 Rel. "	30	.61	18.30	1.80	20.10	.18	1.50	18.42
Sub Total #12				82.87	25.79	108.66	1.06	7.20	97.90
Adam G. Coels	34 Ch/Serv.	40	.55	22.00	19.90	41.90	.42	-	41.48
John Hunt	1 Dogman	30	.50	15.00	2.95	17.95	.18	1.00	16.77
Harry Cole	1 "	30	.50	15.00	11.65	26.65	.25	2.50	23.90
Jimmy Cunningham	1 "	26	.45	11.70		11.70	.12	.10	11.48
Dick Dickerson	1 B.S. "	32	.50	16.00	7.65	23.65	.24	2.20	21.21
Bob Coffman	1 Usher	24	.40	9.60		9.60	.10	-	9.50
Joe Ellis	1 "	19	.40	7.60		7.60	.08	-	7.52
Wendall Lestock	1 "	35	.40	14.00		14.00	.14	.70	13.16
Walter McDaniels	1 "	22	.45	9.90		9.90	.10	-	9.80
	1 "	26	.40	10.40		10.40	.10	-	10.30
Earl David	1 "	31	.40	12.40		12.40	.12	.80	11.98
Kenneth Rhodes	1 "	30	.45	13.50		13.50	.15	2.90	10.45
Clyde Rhodes	1 "	33	.40	13.20		13.20	.13	.50	12.57
Jim Ruby	1 "	25	.45	11.25		11.25	.10	-	11.15
Bill Sawders	1 "	39	.45	17.55		17.55	.18	1.20	16.17
Phyllis Beagle	1 Usharette	35	.40	14.00		14.00	.14	.50	13.36
Gerry Cardarelli	1 "	36	.40	14.40		14.40	.14	.70	13.56
Juanita Killinger	1 "	35	.40	14.00		14.00	.14	.50	13.36
Madeline Marinos	1 "	19	.40	7.60	8.10	15.70	.16	.80	14.74
Betty Oylar	1 "	31	.45	13.95		13.95	.14	.50	13.31
Donna Turner	1 "	30	.40	12.00		12.00	.12	.50	11.38

Bill Sawders	1 "	39	.45	17.55		17.55	.18	1.20	16.17
Phyllis Beagle	1 Usharette	35	.40	14.00		14.00	.14	.50	13.36
Gerry Cardarelli	1 "	36	.40	14.40		14.40	.14	.70	13.56
Juanita Killinger	1 "	35	.40	14.00		14.00	.14	.50	13.36
Madeline Marinos	1 "	19	.40	7.60	8.10	15.70	.16	.80	14.74
Betty Oylar	1 "	31	.45	13.95		13.95	.14	.50	13.31
Donna Turner	1 "	30	.40	12.00		12.00	.12	.50	11.38
Sub Total #12				206.25	50.25	256.50	3.56	15.20	237.74
Sam Hardy, Jr.	3 Porter	30	.50	15.00	5.00	20.00	.20	-	19.80
Eugene Stone	1 "	30	.50	15.00	12.75	27.75	.28	2.90	24.57
Hayes Toy	7 "	30	.50	15.00	5.00	20.00	.20	-	19.80
Granville Venable	4 "	30	.50	15.00	5.00	20.00	.20	-	19.80
Sub Total #12				60.00	27.75	87.75	.70	2.90	84.15
Rose Young	1 H/Cleaner	30	.67	20.10	7.57	27.67	.27	2.90	24.50
Katie Pineses	1 Cleaner	30	.67	20.10		20.10	.20	1.70	18.20
Katie Vlack	1 "	30	.67	20.10		20.10	.20	1.70	18.20
Julia Demiter	3 "	30	.67	20.10		20.10	.20	-	19.90
Anna Bilandsia	3 "	30	.67	20.10		20.10	.20	-	19.90
Klis. Kedra	1 "	30	.67	20.10		20.10	.20	1.70	18.20
Henry Folk	2 H/Watch.	42	.50	21.00	10.00	31.00	.31	.70	30.00
Homer Deem	1 S/Police	54	.50	27.00		27.00	.27	5.10	21.63
Sub Total #12				125.50	27.57	153.07	1.25	10.30	141.52
Samuel Myers	4 Eng.	48	.65	31.20	8.09	39.29	.39	4.80	34.10
James R. Myers	1 "	48	.65	31.20	4.68	35.88	.36	7.50	28.02
Sub Total #12				115.00	12.77	127.77	1.28	12.30	114.19
Hazel Pilot	5 Matron	30	.57	17.10	1.00	18.10	.18	-	17.92
Total #12				1057.62	92.95	1150.55	11.51	90.60	1048.44
L. M. Summers	4 Oper.			91.00	5.00	96.00	.94	9.10	85.96
Harry Jones	5 "			91.00	5.00	96.00	.94	7.10	87.96
R. A. White	2 "			91.00		91.00	.91	12.80	77.69
Charles Haggoner	3 "			91.00	5.00	96.00	.94	11.10	84.96
James Shuff	2 "			52.00		52.00	.52	10.90	40.58
T. G. Main	2 "			59.00		59.00	.59	5.10	53.41
Total #12A				584.00	100.00	684.00	6.84	55.70	621.46
Wm. Kappel	2 S/Hand			69.08	20.50	89.58	.90	12.00	76.68
Harold Marlin	3 "			69.08	18.00	87.08	.87	9.90	76.31
Wm. Nicol	2 "			44.00	25.00	69.00	.67	7.80	60.53
John McGowan	2 "			44.00	20.50	64.50	.65	7.50	56.35
John Betts	3 "			44.00	18.00	62.00	.62	5.50	55.88
Wm. Bell	1 "			44.00	18.00	62.00	.62	9.10	52.28
Delbert Bruner	4 "			44.00	18.00	62.00	.62	5.50	55.88
Total #5				358.16	156.00	494.16	4.95	54.80	434.41

TOTALS

NOTE: PLEASE FILL OUT ALL SCHEDULES ON BACK OF THIS SHEET

NATIONAL LABOR RELATIONS BOARD  
CASE NO. 100-10000-10000  
IN THE MATTER OF  
DATE 3/14/47  
WITNESS  
OFFICIAL REPORTER

GENERAL COUNSEL'S EXHIBIT 8.  
Palace Theatre Payroll, February 26, 1947.



## NEW EMPLOYEES WHO ARE RECEIVING FIRST PAY.

NAME	AGE	POSITION	SOC SEC NO.	SCHOOL CERT. RECD.	GOVT. CERT. RECD.	REMARKS
Gerry Cardarelli		Usharette				
Juanita Ellinger						

## INCREASES IN BASIC RATES:

NAME	POSITION	OLD RATE AMOUNT PER	NEW RATE AMOUNT PER	AUTHORITY
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## EXPLANATION OF OVERTIME:

NAME	POSITION	HOURS	RATE	AMOUNT	REASON FOR OVERTIME
Hill	Cashier	1	.61	.61	over reg. 58 hr. shift
Parsons	"	2	.61	1.22	" " " "
LoPensima	"	6	.61	3.66	" " 50 " "
Thomas	Rel. "	30	.61	18.30	Relief cashier
Goels	Ch/Serv.	18	.55	9.90	over reg. 40 hr. shift
"	"	2 nights	5.00	10.00	as nightwatchman-(sick)
Hunt	Doorman	3	.45	1.35	over reg. 50 hr. shift
"	"	4	.40	1.60	as usher
Cole	"	1	.45	.45	over reg. 50 hr. shift
"	"	23	.40	11.20	as usher
Dickerson	B.S. "	17	1.45	7.65	as usher
Marinos	Doorman	18	.45	8.10	on door
Hardy, Jr.	Porter	6	.80	5.00	off reg. 50 hr. shift
Stone	"	25 1/2	.50	12.75	over " " " "
Toy	"	10	.50	5.00	off " " " "
Venable	"	10	.50	5.00	over " " " "
Young	H/Cleaner	11	.67	7.37	week end business, Matrons day off

Dickerson	B.S. "	17	1.45	7.65	as usher	
Marinos	Doorman	18	.45	8.10	on door	
Hardy, Jr.	Porter	6	.80	5.00	off reg. 50 hr. shift	
Stone	"	25 1/2	.50	12.75	over " " " "	
Toy	"	10	.50	5.00	off " " " "	
Venable	"	10	.50	5.00	over " " " "	
Young	H/Cleaner	11	.67	7.37	week end business, Matrons day off	
Folk	H/Watch.	2 nights	5.00	10.00	off reg. shift - sick	
Myers, Sam	Eng.	3	2.03	6.09	over reg. 48 hr. shift	beoth
" James	"	3	1.58	4.68	" " " " " "	, 1 hr. lights in
Pilot	Matron	2 1/2	.40	1.00	" " 58 " "	
Summers	Oper. 1	1	5.00	5.00	late show Sat. nite	
Jones	"	1	5.00	5.00	" " " " " "	
Waggoner	"	1	5.00	5.00	over	
Shuff	"	4 days	13.00	52.00	worked for White - vacation	
Main	"	3 days	13.00	39.00	" " " " " "	
Kappel	S/Hand			20.50	18.00 extra shows, 2.50 bldg. platform	
Claflin	"			18.00	" " " " " "	
Nicol	"			25.00	" " " " " "	, 2.50 bldg. platform
McCowan	"			20.50	" " " " " "	, 2.50 early Sunday
Betts	"			18.00	" " " " " "	, 2.50 late show Sat.
Ball	"			18.00	" " " " " "	
Bruner	"			18.00	" " " " " "	
1 Leader				52.00		
8 Sidemen @ \$.56.00				288.00	stand by band for Clyde McCoy	

## SEPARATION DATA ON ALL EMPLOYEES DROPPED FROM PAY ROLL THIS WEEK:

NAME	POSITION	REASON EMPLOYEE NOT ON PAY ROLL
Quinter	Usher	sick
Thompson, Leana	Usharette	resigned - to take candy counter
Howard	"	"
Zenner	"	sick
Harris	"	discharged

GE 8-4-2



# THEATRE PAY ROLL

REGISTRATION

COMPANY

Akron Palace Theatre Corp.

THEATRE

Palace

CITY

Akron

WEEK ENDING

4/16/47

APPROVED FOR PAYMENT

		BASIC SALARY	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
					FED. O. A.	FED. I. T.	
12	1051.42	98.60	1150.02	11.51	89.40		1049.11
12A	364.00	18.00	382.00	3.82	58.70		339.48
5	358.16	135.00	494.16	4.94	54.80		434.42
7		540.00	540.00	5.40	25.30		511.30

AMOUNT PAID OUT BY:

TOTAL PAID 1773.58 592.60 2366.18 25.65 208.20 2134.53

SHORTAGE OVER IN CASH THIS WEEK 41.97

AMOUNT OF ESTIMATED PAY ROLL CHECK NO 11315 2176.27

NAME	FED. I. T. EXEMPTIONS	POSITION	HOURLY WORKERS HRS.	RATE	BASIC SALARY HRS. AMOUNT	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
								FED. O. A.	FED. I. T.	
Sid Holland		3 Mgr.			155.00		155.00	1.55	19.10	114.35
Paul M. Grubb		2 A/Mgr.			80.00		80.00	.80	8.50	70.70
Conrad Reining		2 2nd A/Mgr.			42.50		42.50	.45	5.60	38.47
Bette Butler		1 Bkkr.			45.00		45.00	.45	6.00	38.55
Sub Total #12										
Dorothy Gillespie		1 H/Cashier	31	.65	20.15		20.15	.20	1.70	18.25
Elizabeth Hill		1 Cashier			56 21.96	.61	22.57	.25	2.00	20.34
Elaine Parsons		1 "			56 21.96	1.22	23.18	.25	2.20	20.73
Mary LePensina		5 "			50 18.50	3.05	21.55	.21	-	21.14
Marie Thomas		1 Rel. "	29	.61		17.69	17.69	.18	1.20	16.51
Sub Total #12										
Adam G. Goels		4 Ch/Berv.			40 22.00	13.20	35.20	.35	-	34.85
Leslie Beaty		2 Doorman			50 15.00	3.00	18.00	.18	-	17.82
Harry Cole		1 "	26	.50		13.00	13.00	.30	3.20	26.15
Jimmy Cunningham		1 "	8	.45		3.60	3.60	.04	-	3.56
Carson Myers		1 "	20	.45		9.00	9.00	.09	-	8.91
Dick Dickerson		1 B.S. "	8	.50		4.00	5.15	.07	-	7.08
Bill Sawders		1 "	24	.50		12.00	4.95	.17	1.00	15.78
Bob Coffman		1 Usher	28	.40		10.40		.10	-	10.30
Tom Guinter		1 "	24	.40		9.60		.10	-	9.50
John Hunt		1 "	6	.40		2.40		.02	-	2.38
Chester Janczewski		1 "	42	.40		16.80		.17	1.00	15.63
Karl Ravid		1 "	28	.40		11.20		.11	.10	10.99
Kenneth Rhoades		1 "	60	.45		27.00		.27	2.90	23.83
Clyde Rhodes		1 "	48	.45		21.60		.22	1.80	19.58
Jim Ruby		1 "	17	.45		7.65		.08	-	7.57
Richard Skinner		1 "	35	.40		14.00		.14	.70	13.16
Carl Woodson		1 "	19	.40		7.60		.08	-	7.52
Catherine Allruts		1 Usherette	38	.40		14.40		.14	.70	13.56
Phyllis Beagle		1 "	25	.40		9.20		.09	-	9.11
Gerry Cardarelli		1 "	40	.40		16.00		.16	1.00	14.84
		1 "				18.20		.18	.50	12.57

Carl Woodson	1 "	19	.40							
Catherine Allruts	1 Usherette	38	.40		14.40		14.40	.14	.70	13.56
Phyllis Beagle	1 "	25	.40		9.20		9.20	.09	-	9.11
Gerry Cardarelli	1 "	40	.40		16.00		16.00	.16	1.00	14.84
Juanita Ellinger	1 "	35	.40		14.00		14.00	.14	.70	13.16
Madeline Marinos	1 "	5	.40		2.00		2.00	.02	-	1.98
Donna Turner	1 "	40	.40		16.00		16.00	.16	1.00	14.84
Louise Zenner	1 "	8	.40		3.20		3.20	.03	-	3.17

Sub Total #12										
Sam Hardy, Jr.	3 Porter				30 15.00	1.50	16.50	.17	-	16.33
Eugene Stone	1 "				50 15.00	16.00	31.00	.31	3.60	27.09
Mayes Toy	7 "				30 15.00		15.00	.15	-	14.85
Granville Venable	4 "				50 15.00		15.00	.15	-	14.85

Sub Total #12										
Rose Young	1 H/Cleaner				50 20.00	7.57	27.57	.27	2.90	24.20
Katie Pinones	1 Cleaner				50 20.00		20.00	.20	1.70	18.10
Katie Vlock	1 "				50 20.00		20.00	.20	1.70	18.10
Anna Biflandsia	5 "				50 20.00		20.00	.20	-	19.80
Julia Demiter	5 "				50 20.00		20.00	.20	-	19.80
Elis. Kedra	1 "				50 20.00		20.00	.20	1.70	18.10
Henry Folk	2 H/Watch.				42 35.00		35.00	.35	2.40	32.25
Homer Deen	1 S/Police				54 40.50		40.50	.41	3.10	34.99

Sub Total #12										
Samuel Myers	4 Eng.				48 35.00	6.09	41.09	.71	4.80	35.58
James R. Myers	1 "				48 50.00	5.12	55.12	.55	7.50	45.22

Sub Total #12										
Hasel Pilot	5 Matron				55 16.00	1.00	17.00	.17	-	16.83

Total #12A										
L. N. Summers	4 Oper.				91.00	12.00	103.00	11.03	10.50	91.47
Harry Jones	5 "				91.00	10.00	81.00	.81	4.70	75.49
R. A. White	2 "				91.00		91.00	.91	12.40	77.69
Charles Waggoner	5 "				91.00	9.00	94.00	.94	11.10	81.96
James A. Shuff	2 "					15.00	15.00	.15	-	12.87

Total #5										
Wm. Kappel	2 S/Hand				69.08	20.50	89.58	.90	12.00	76.68
Harold Claflin	5 "				69.08	18.00	87.08	.87	9.60	76.61
Wm. Nicol	2 "				44.00	20.50	64.50	.64	7.50	56.36
John McGowan	2 "				44.00	25.00	69.00	.67	7.80	58.53
John Pomeroy	1 "				44.00	18.00	62.00	.62	9.10	52.28
Karl Hermann	5 "				44.00	18.00	62.00	.62	5.30	56.08
Delbert Bruner	4 "				44.00	18.00	62.00	.62	5.50	57.88

Total #5										
					358.16	135.00	494.16	4.94	54.80	434.42

TOTALS

NOTE: PLEASE FILL OUT ALL SCHEDULES ON BACK OF THIS SHEET

OFFICIAL REPORTER

GENERAL COUNSEL'S EXHIBIT 10.  
Palace Theatre Payroll, April 16, 1947.

## HEATRE PAY ROLL

COMPANY:		RECAPITULATION					
		BASIC SALARY	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
					FED. O. A.	FED. I. T.	
THEATRE:	No.						
CITY:	" "						
WEEK ENDING:	" "						
APPROVED FOR PAYMENT:	" "						
MANAGER	" "						
AMOUNT PAID OUT BY:	TOTAL PAID						
SHORT OR OVER IN CASH THIS WEEK							
AMOUNT OF ESTIMATED PAY ROLL CHECK NO.							

C.C. 8-11-3

NAME	FED. I. T. EXEMPT. TIONS	POSITION	HOURLY WORKERS		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
			HRS.	RATE	HRS.	AMOUNT			FED. O. A.	FED. I. T.	
Mark Houser	2	Leader					52.00	52.00	.52	5.88	46.18
Paul Kares	0	Sideman					36.00	36.00	.56	6.80	29.44
Reginald Light	1	"					36.00	36.00	.56	4.40	31.24
Henry Chernin	5	"					36.00	36.00	.56	-	35.44
Robert Lese	4	"					36.00	36.00	.56	-	35.44
Mark Houser, Jr.	1	"					36.00	36.00	.56	4.40	31.24
Ralph Herren	2	"					36.00	36.00	.56	2.60	33.04
John Margin	3	"					36.00	36.00	.56	.80	34.64
David Williamson	5	"					36.00	36.00	.56	-	35.44
Total 27							340.00	340.00	3.62	21.70	312.68



# THEATRE PAY ROLL

COMPANY		RECAPITULATION						
		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
		NO.				FED. O. A.	FED. I. T.	
Akron Palace Theatre Corp.	Palace	12	1069.87	91.15	1160.50	11.65	90.00	1058.85
CITY	Akron	12A	864.00	6.00	870.00	5.70	84.50	784.30
WEEK ENDING	5/26/47	5	558.15	136.00	694.15	4.95	54.80	639.35
APPROVED FOR PAYMENT		7		540.00	540.00	5.40	25.30	514.60

AMOUNT PAID OUT BY:	TOTAL PAID	1791.55	575.15	2364.66	25.70	204.60	2185.55
	SHORT OR OVER IN CASH THIS WEEK						7.26
	AMOUNT OF ESTIMATED PAY ROLL CHECK NO 11224						2129.10

NAME	FED. EXEMPTIONS	POSITION	HOURLY WORKERS	BASIC SALARY	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS	CASH PAID
			HRS. RATE	HRS. AMOUNT			FED. O. A. FED. I. T.	
Sid Holland		3 Mgr.		155.00		155.00	1.35 12.10	114.55
Paul M. Grubb		2 A/Mgr.		80.00		80.00	.80 8.50	70.70
Conrad Reining		2 2nd A/Mgr.		42.50		42.50	.45 3.60	36.47
Bette Butler		1 Bkpr.		45.00		45.00	.45 6.00	38.55
Sub Total #12				302.50		302.50	2.05 27.20	252.27
Dorothy Gillespie		1 R/Cashier	32 .65	20.80		20.80	.21 1.70	18.89
Elizabeth Hill		1 Cashier	36	21.93	.61	22.57	.23 2.00	20.34
Elaine Parsons		1 "	33	21.96	1.65	23.79	.24 2.20	21.35
Mary LoPanzina		3 "	50	16.80	1.22	19.52	.30 -	19.22
Marie Thomas		1 Rch. "	29 .61		17.69	17.69	.18 1.20	16.31
Sub Total #12				83.02	21.55	104.57	1.06 7.10	96.41
Adam G. Goetz		4 Ch/Serv.	40	22.00	15.20	37.20	.35 -	36.85
John Hunt		1 Doorman	29 .45	13.05	2.80	15.85	.18 .80	14.87
Harry Cole		1 "	24 .50	12.00	10.35	22.35	.22 2.00	20.13
Jimmy Cunningham		1 "	14 .45	6.30		6.30	.08 -	6.22
Leellie Beatty		2 "	50	15.00	5.00	20.00	.18 -	19.82
Dick Dickerson		1 B.S. "	32 .40	12.80	5.85	18.65	.23 1.80	17.62
Bob Coffman		1 Usher	29 .40	11.60		11.60	.12 .10	11.38
Toa Quinter		1 "	12 .40	4.80		4.80	.06 -	4.74
Walter McDaniels		1 "	33 .45	14.85		14.85	.15 .70	14.00
Carson Myers		1 "	5 .40	2.00		2.00	.02 -	1.98
Earl Ravid		1 "	39 .40	15.60		15.60	.16 .80	14.64
Kenneth Rhoades		1 "	60 .45	27.00		27.00	.27 2.90	23.83
Clyde Rhoades		1 "	45 .40	18.00		18.00	.18 1.30	16.52
Jim Ruby		1 "	25 .45	11.25	6.00	17.25	.17 1.20	15.88
Bill Sanders		1 "	50 .45	22.50		22.50	.14 .50	21.86
Richard Skinner		1 "	17 .40	6.80		6.80	.07 -	6.73
Catherine Allruts		1 Usherette	13 .40	5.20		5.20	.05 -	5.15
Phyllis Beagle		1 "	25 .40	10.00		10.00	.10 -	9.90
Jerry Cardarelli		1 "	32 .40	12.80		12.80	.13 .50	12.17
Juanita Ellinger		1 "	32 .40	12.80		12.80	.13 .50	12.17
Madeline Marinos		1 "	37 .40	14.80		14.80	.15 .70	13.95

Catherine Allruts	1 Usherette	13 .40	5.20		5.20		.05 -	5.15
Phyllis Beagle	1 "	25 .40	10.00		10.00	.10 -	-	9.90
Jerry Cardarelli	1 "	32 .40	12.80		12.80	.13 .50	-	12.17
Juanita Ellinger	1 "	32 .40	12.80		12.80	.13 .50	-	12.17
Madeline Marinos	1 "	37 .40	14.80		14.80	.15 .70	-	13.95
Donna Turner	1 "	40 .40	16.00		16.00	.16 1.00	-	14.84
Louise Zenner	1 "	40 .40	16.00		16.00	.16 1.00	-	14.84
Sub Total #12			297.55	41.20	338.75	5.40 15.40	-	317.95
Sam Hardy, Jr.	2 Porter	50	15.00	.50	15.50	.15 -	-	15.35
Eugene Stone	1 "	50	15.00	11.50	26.50	.27 2.70	-	23.53
Hayes Toy	7 "	50	15.00		15.00	.15 -	-	14.85
Granville Venable	4 "	50	15.00		15.00	.15 -	-	14.85
Sub Total			209.50	11.80	221.30	5.30 12.10	-	203.90
Rose Young	1 R/Cleaner	50	20.00	7.57	27.57	.27 2.90	-	24.40
Katie Pines	1 Cleaner	50	20.00		20.00	.20 1.70	-	18.10
Katie Vleck	1 "	50	20.00		20.00	.20 1.70	-	18.10
Anna Bilandis	5 "	50	20.00		20.00	.20 -	-	19.80
Julia Demiter	5 "	50	20.00		20.00	.20 -	-	19.80
Elis. Kedra	1 "	50	20.00		20.00	.20 1.70	-	18.10
Henry Folk	2 R/Watch.	42	55.00		55.00	.55 2.40	-	52.05
Homer Dean	1 B/Police	54	40.50		40.50	.41 5.10	-	34.99
Sub Total #12			125.50	7.57	133.07	2.05 15.50	-	115.52
Sagual Myers	4 Eng.	48	65.00	8.09	73.09	.71 4.80	-	67.58
James R. Myers	1 "	48	60.00	3.12	63.12	.63 7.50	-	55.02
Sub Total #12			115.00	9.21	124.21	1.24 12.10	-	110.87
Hazel Pilot	3 Matron	36	16.00	1.00	17.00	.17 -	-	16.83
Total #12A			1069.37	91.13	1160.50	11.65 90.00	-	1058.85
L. W. Summers	4 Oper.		91.00		91.00	.91 8.50	-	81.79
Harry Jones	5 "		91.00	25.00	116.00	.98 2.70	-	112.32
R. A. White	2 "		91.00	5.00	96.00	.94 13.10	-	79.96
Charles Waggoner	3 "		91.00		91.00	.91 10.40	-	79.69
Albert Rallins	4 "			15.00	15.00	.15 -	-	14.85
H. Goodell	4 "			15.00	15.00	.15 -	-	14.85
Total #12B			364.00	6.00	370.00	3.70 54.50	-	311.80
Wm. Kappel	2 S/Hand		69.08	20.50	89.58	.90 12.00	-	76.68
Harold Claflin	5 "		69.08	18.00	87.08	.87 9.80	-	76.51
Wm. Nicol	2 "		44.00	25.00	69.00	.67 7.80	-	58.53
John McGowan	2 "		44.00	20.50	64.50	.65 7.50	-	56.55
Delbert Bruner	4 "		44.00	18.00	62.00	.62 5.50	-	56.08
Karl Hermann	5 "		44.00	18.00	62.00	.62 5.50	-	56.08
John Pomerey	1 "		44.00	18.00	62.00	.62 9.10	-	52.28
Total #5			364.00	124.00	488.00	4.95 54.80	-	438.25

CASE NO. 84  
IN THE MATTER OF  
DATE 3/1/47  
WITNESS  
OFFICIAL REPORTER

NOTE: PLEASE FILL OUT ALL SCHEDULES ON BACK OF THIS SHEET

GENERAL COUNSEL'S EXHIBIT 9  
Palace Theatre Payroll, March 26, 1947



NEW EMPLOYEES WHO ARE RECEIVING FIRST PAY

[illegible]

### INCREASES IN BASIC RATES:

[illegible]

EXPLANATION OF OVERTIME:

NAME	POSITION	HOURS	RATE	AMOUNT	REASON FOR OVERTIME
Kill	Cashier	2	.91	1.82	over reg. 36 hr. shift
Parsons	"	1	.81	.80	" " " "
Bowiak	"	2 1/2	.61	1.52	" " " "
Oylar	Rel."	32	.81	19.52	Relief cashier
Goels	Ch/Serv.	24	.55	13.20	over reg. 40 hr. shift
Beaty	Doorman	6	.50	3.00	" " " "
Sole	"	25	.45	11.25	as usher
Summingham	"	1	.40	.80	" "
Tagan	"	28	.40	11.20	" "
Hyers	"	11	.45	4.95	" "
Hardy, Jr.	Usher	12	.50	6.00	on door
Stens	Porter	1	.50	.50	off reg. 30 hr. shift
Young	"	34	.50	17.00	over reg. 30 hr. shift
Beatty	R/Cleaner	11	.87	7.57	Wk. end business, matrons day off
	S/Police	2 1/2	.75	1.87	vacation day

Hardy, Jr.	Usher	15	.80	5.00	on door
Star	Porter	1	.50	.50	off reg. 50 hr. shift
Young	"	54	.50	17.00	over reg. 50 hr. shift
Dean	H/Cleaner	11	.67	7.57	Wk. end business, matrons day off
Myers, Sam	S/Police	54	.75	40.50	vacation pay
" James	Eng.	4	2.03	8.12	over reg. 48 hr. shift
Pilot	"	7	1.56	7.12	" " " "
Summers	Matron	23	.40	1.00	" " 24 " "
Jones	Oper.	19	5.00	4.50	late show Sat. nite
"	"	19	5.00	4.50	" " " "
Haggner	"	2 days	13.00	25.00	off reg. shift
Tabor	"	2	3.00	8.00	ones - Prima & Lahrner
Ryder	"	1 day	13.00	13.00	worked for Jones
Kappel	"	"	13.00	13.00	" " " "
Glaflin	S/Band			15.00	extra shows, 21.00 rehearsal, Lahrner
Nicol	"			36.00	" " " " 8.00 " "
	"			27.00	" " " " 8.00 " "
McGowan	"			30.00	15.00 extra shows, 3.00 bldg. platform, 3.00 early Sun.
Pitts	"			21.00	5.00 late Saturday, 6.00 rehearsal
Glaflin, Ralph	"			21.00	" " " " " "
Bruner	"			21.00	" " " " " "
1 Leader				52.00	
2 Sidemen @ \$25.00				260.00	Stand by band for Louis Prima
1 Leader				15.00	
2 Sidemen @ \$25.00					

SEPARATION DATA ON ALL EMPLOYEES DROPPED FROM PAY ROLL THIS WEEK:

NAME	POSITION	REASON EMPLOYEE NOT ON PAY ROLL
Hazel Walker Richard Skinner Catherine Marchok	Cashier Usher Usherette	2 weeks leave resigned "

G.E. 12-P. 2.



## NEW EMPLOYEES WHO ARE RECEIVING FIRST PAY:

NAME	AGE	POSITION	SOC. SEC. NO.	SCHOOL CERT. RECD.	GOVT. CERT. RECD.	REMARKS
Chester Janaszewski		Usher	278-24-8629			
Earl Woodson			300-22-8634			

## INCREASES IN BASIC RATES:

NAME	POSITION	OLD RATE		NEW RATE		AUTHORITY
		AMOUNT	PER	AMOUNT	PER	

## EXPLANATION OF OVERTIME:

NAME	POSITION	HOURS	RATE	AMOUNT	REASON FOR OVERTIME
Hill	Cashier	1	.61	.61	over reg. 36 hr. shift
Parsons	"	2	.61	1.22	" " " " " "
LoPensina	"	5	.61	3.05	" " 30 " "
Thomas	Rel."	29	.61	17.69	Relief cashier
Goals	Ch/Serv.	24	.65	15.60	over reg. 40 hr. shift
Beaty	Doorman	8	.50	4.00	" " 30 " "
Cole	"	37	.45	16.65	as usher
Dickerson	B.S."	7	.45	3.15	" "
Sawdars	"	11	.45	4.95	" "
Hardy, Jr.	Porter	3	.50	1.50	over reg. 30 hr. shift
Stone	"	32	.50	16.00	" " " "
Young	H/Cleaner	11	.67	7.37	Wk. and business, Matrons day off
Myers, Sam	Eng.	3	2.03	6.09	over reg. 48 hr. shift
James	"	2	1.56	3.12	" " " "
Filet	Matron	24	.40	9.60	" " 36 " "
Summers	Oper.	4	3.00	12.00	1 hr. late Sat. nite, 3 hrs. RCA Sefv
Jones	"	1	3.00	3.00	" " " "
Jones	"	1 day	15.00	15.00	off reg. shift
Waggoner	"	1	3.00	3.00	ones
Shuff	"	1 day	15.00	15.00	worked for Jones
Kappel	S/Hand			20.50	18.00 extra shoes, 2.50 bldg. platform
Claflin	"			18.00	" " " "
Nicol	"			20.50	" " " "
McGowan	"			25.00	" " " "
Pomeroy	"			18.00	" " " "
Hermann	"			18.00	" " " "
Bruner	"			18.00	" " " "
1 Leader				52.00	
8 Sidemen @ \$36.00				288.00	Stand by band for Charlie Spivak

G.C. 10-122

## SEPARATION DATA ON ALL EMPLOYEES DROPPED FROM PAY ROLL THIS WEEK:

NAME	POSITION	REASON EMPLOYEE NOT ON PAY ROLL
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## THEATRE PAY ROLL

COMPANY:

## RECAPITULATION

THEATRE:

CITY:

WEEK ENDING:

APPROVED FOR PAYMENT:

AMOUNT PAID OUT BY:

MANAGER:

TOTAL PAID

SHORT OR OVER IN CASH THIS WEEK:

AMOUNT OF ESTIMATED PAY ROLL CHECK NO.

NAME	FED. I. T. EXEMP. TIONS	POSITION	HOURLY WORKERS		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
			HRS.	RATE	HRS.	AMOUNT			FED. O. A.	FED. I. T.	
Ange Lombardi		2 Leader					52.00	52.00	.52	5.30	46.18
Dalbert Boyer		1 Sideman					36.00	36.00	.36	4.40	31.24
Harry Clark		3 "					36.00	36.00	.36	.80	34.84
Reginald Light		1 "					36.00	36.00	.36	4.40	31.24
John Marvin		3 "					36.00	36.00	.36	.80	34.84
Wilbur Mathias		3 "					36.00	36.00	.36	.80	34.84
Robert O'Dell		1 "					36.00	36.00	.36	.80	34.84
James Scroggy		1 "					36.00	36.00	.36	4.40	31.24
Glean Tripp		4 "					36.00	36.00	.36	4.40	31.24
Total #7							342.00	342.00	3.42	25.30	311.28

G-E-10-P-3

## THEATRE PAY ROLL

COMPANY:

## RECAPITULATION

THEATRE:

CITY:

WEEK ENDING:

APPROVED FOR PAYMENT:

AMOUNT PAID OUT BY:

MANAGER:

TOTAL PAID

SHORT OR OVER IN CASH THIS WEEK:

AMOUNT OF ESTIMATED PAY ROLL CHECK NO.

NAME	FED. I. T. EXEMP. TIONS	POSITION	HOURLY WORKERS		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
			HRS.	RATE	HRS.	AMOUNT			FED. O. A.	FED. I. T.	
Ange Lombardi		2 Leader				39.00	39.00	78.00	.78	18.10	67.12
Donald Owen		4 Sideman				27.00	27.00	54.00	.54	2.00	51.46
Harry Clark		3 "				27.00	27.00	54.00	.54	3.80	49.66
Reginald Light		1 "				27.00	27.00	54.00	.54	7.50	45.96
John Marvin		3 "				27.00	27.00	54.00	.54	3.80	49.66
Wilbur Mathias		3 "				27.00	27.00	54.00	.54	3.80	49.66
Robert O'Dell		1 "				27.00	27.00	54.00	.54	7.50	45.96
James Scroggy		1 "				27.00	27.00	54.00	.54	7.50	45.96
Glean Tripp		4 "				27.00	27.00	54.00	.54	7.50	45.96
William Rumsicker		2 "				27.00	27.00	27.00	.27	-	26.73
Total #7						255.00	255.00	510.00	5.10	47.00	457.90

G-E-12-P-3



## THEATRE PAY ROLL

## RECAPITULATION

COMPANY:

Akron Palace Theatre Corp.

THEATRE: Palace

CITY: Akron

WEEK ENDING: 4/30/47

APPROVED FOR PAYMENT:

AMOUNT PAID OUT BY:

No.	BASIC SALARY	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
				FED. O. A.	FED. I. T.	
12	1054.52	105.28	1159.80	11.62	91.80	1056.88
12A	364.00	100.00	464.00	4.64	48.80	415.56
5	511.74	149.50	661.04	4.64	48.00	608.40
7		540.00	540.00	.540	25.50	511.50
TOTAL PAID 1750.26 694.58 2424.84 24.50 208.40 2192.14						
SHORT OR OVER IN CASH THIS WEEK 25.51						
AMOUNT OF ESTIMATED PAY ROLL CHECK NO. 11365 2166.65						

NAME	FED. I. T. EXEMP. TIONS	POSITION	HOURLY WORKERS		BASIC SALARY AMOUNT	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
			HRS.	RATE				FED. O. A.	FED. I. T.	
Sid Holland		3 Mgr.			135.00		135.00	1.55	19.19	114.55
Paul M. Grubb		2 A/Mgr.			80.00		80.00	.80	8.50	70.70
Conrad Reining		2 2nd A/Mgr.			42.50		42.50	.45	3.60	38.47
Bette Butler		1 Bkkr.			45.00		45.00	.45	6.00	38.55
Sub Total #12 502.50 502.50 5.05 57.20 262.27										
Dorothy Gillespie		1 H/Cashier	51	.65	20.15		20.15	.20	1.70	18.25
Elisabeth Hill		1 Cashier			21.98	1.83	23.79	.24	2.20	21.35
Elaine Parsons		1 "			21.98	1.83	23.79	.24	2.20	21.35
Mary LoPensina		5 "			18.50	2.44	20.74	.21	-	20.53
Marie Thomas		1 Rel. "	50	.61	18.50		18.50	.18	1.50	16.82
Sub Total #12 82.57 24.40 106.77 1.07 7.40 98.80										
Adam G. Goels		4 Ch/Serv.			22.00	15.40	37.40	.37	-	37.03
Leslie Beaty		2 Doorman			15.00	3.00	18.00	.18	-	17.82
Harry Cole		1 "			15.00	13.80	28.80	.29	5.00	25.51
Carman Myers		1 "	23	.45	10.35		10.35	.10	-	10.25
Richard Skinner		1 "	20	.45	9.00	9.60	18.60	.19	1.50	17.11
Dick Dickerson		1 B.S. "	27	.50	13.50		13.50	.14	.50	12.86
Bob Coffman		1 Usher	26	.40	10.40		10.40	.10	-	10.30
Tom Ginter		1 "	19	.40	7.60		7.60	.09	-	7.52
Chester Janszewski		1 "	11	.40	4.40		4.40	.04	-	4.36
Eari David		1 "	36	.45	16.20		16.20	.16	1.00	15.04
Kenneth Rhoades		1 "	60	.45	27.00		27.00	.27	2.90	23.83
Olyde Rhoades		1 "	58	.45	26.10		26.10	.26	2.70	23.14
Bill Sanders		1 "	36	.45	16.20	4.50	20.70	.21	1.70	18.79
Carl Woodson		1 "	32	.40	12.80		12.80	.13	.50	12.57
Catherine Allruts		1 Usherette	35	.40	14.00		14.00	.14	.70	13.16
Phyllis Beagle		1 "	34	.40	13.60		13.60	.14	.50	12.96
Gerry Cardarelli		1 "	33	.40	13.20		13.20	.14	.70	12.46
Juanita Ellinger		1 "	20	.40	8.00		8.00	.08	-	7.92
Lorraine Hakin		1 "	20	.40	8.00		8.00	.08	-	7.92

Phyllis Beagle	1	"	34	.40	13.60		13.60	.14	.50	12.96
Gerry Cardarelli	1	"	36	.40	14.40		14.40	.14	.70	13.56
Juanita Ellinger	1	"	20	.40	8.00		8.00	.08	-	7.92
Lorraine Hakin	1	"	20	.40	8.00		8.00	.08	-	7.92
Shirley Rowan	1	"	29	.40	11.60		11.60	.12	.10	11.38
Donna Turner	1	"	20	.40	8.00		8.00	.08	-	7.92
Sub Total #12 285.15 48.30 333.45 5.50 15.40 310.75										
Sam Hardy, Jr.	3	Porter			15.00	.50	14.50	.15	-	14.35
Eugene Stone	1	"			15.00	17.50	32.50	.33	5.70	26.47
Hayes Toy	7	"			15.00		15.00	.15	-	14.85
Granville Venable	4	"			15.00		15.00	.15	-	14.85
Sub Total #12 60.00 17.00 77.00 .78 5.70 72.52										
Rose Young	1	H/Cleaner			20.00	7.87	27.87	.27	2.90	24.20
Katie Pinones	1	Cleaner			20.00		20.00	.20	1.70	18.10
Katie Vlcek	1	"			20.00		20.00	.20	1.70	18.10
Anna Bilandria	3	"			20.00		20.00	.20	-	19.80
Julia Demiter	3	"			20.00		20.00	.20	-	19.80
Elis. Kedra	1	"			20.00		20.00	.20	1.70	18.10
Henry Folk	2	H/Watch.			35.00		35.00	.35	2.40	32.25
Romer Deem	1	S/Police			40.50		40.50	.41	5.10	34.99
Sub Total #12 195.50 7.57 202.87 2.05 15.50 185.34										
Samuel Myers	4	Eng.			65.00	6.09	71.09	.71	4.80	65.58
James R. Myers	1	"			50.00	5.12	55.12	.55	7.50	45.29
Sub Total #12 115.00 9.21 124.21 1.24 12.10 110.87										
Hazel Pilot	3	Matron			18.00	1.00	17.00	.17	-	16.83
Sub Total #12 1054.52 105.28 1159.80 11.62 91.80 1056.88										
L. M. Summers	4	Oper.			91.00	6.00	97.00	.97	9.50	86.53
Harry Jones	5	"			91.00	15.00	78.00	.78	4.40	72.82
Harry Jones	5	"				91.00	91.00	.91	6.40	85.69
R. A. White	2	"			91.00	3.00	94.00	.94	13.10	79.96
Charles Waggoner	5	"			91.00		91.00	.91	10.40	79.69
James Shuff	2	"				15.00	15.00	.15	-	14.85
Total #12A 564.00 100.00 464.00 4.64 48.80 415.56										
Wm. Kappel	2	S/Hand			52.08	51.65	95.71	.94	10.90	71.97
Harold Clarlin	3	"			59.62	25.15	94.77	.95	11.10	82.72
Wm. Nicol	2	"			52.08	17.50	69.58	.70	8.20	60.68
John McGowan	2	"			54.50	24.00	58.50	.59	6.80	51.61
John Betts	3	"			54.50	15.00	49.50	.50	5.00	44.00
John Pomeroy	1	"			54.50	17.00	51.50	.52	7.00	43.98
Delbert Bruner	4	"			54.50	17.00	51.50	.52	1.50	49.48
Karl Herman	3	NATIONAL LABOR RELATIONS BOARD				2.00	2.00	.02	-	1.98
Total #5 511.74 149.50 661.04 4.64 48.00 608.40										

TOTALS

NOTE: PLEASE FILL OUT ALL SCHEDULES ON BACK OF THIS SHEET



**NEW EMPLOYEES WHO ARE RECEIVING FIRST PAY:**

NAME	AGE	POSITION	SOC. SEC. NO.	SCHOOL CERT. RECD.	GOVT. CERT. RECD.	REMARKS

### INCREASES IN BASIC RATES:

NAME	POSITION	OLD RATE		NEW RATE		AUTHORITY
		AMOUNT	PER	AMOUNT	PER	

EXPLANATION OF OVERTIME:

NAME	POSITION	HOURS	RATE	AMOUNT	REASON FOR OVERTIME
Hill	Cashier	5	.61	1.85	over reg. 36 hr. shift, 2 hrs for sick
Parsons	"	5	.61	1.85	" " " " " " " "
LaForsina	"	4	.61	2.44	" " " " " " " "
Thomas	Rel.	30	.61	18.30	Relief cashier
Goals	Ch./Serv.	28	.55	15.40	over reg. 40 hr. shift
Beatty	Doorman	6	.50	3.00	" " " " " "
Gale	"	6	.50	3.00	" " " " " "
"	"	24	.45	15.80	as usher
Skinner	"	24	.40	9.60	as usher
Sanders	Usher	9	.50	4.50	on Back Stage door
Hardy, Jr.	Porter	1	.50	.50	off reg. 30 hr. shift
Stone	"	35	.50	17.50	over " " " " "
Young	H/Cleaner	11	.67	7.37	Wk. and business. Matrons day off
Sanders	Usher	9	.50	4.50	on Back Stage door
Hardy, Jr.	Porter	1	.50	.50	off reg. 30 hr. shift
Stone	"	35	.50	17.50	over " " " " "
Young	H/Cleaner	11	.67	7.37	Wk. and business, Matrons day off
Myers, Sam	Eng.	5	2.08	6.08	over reg. 48 hr. shift
" James	"	2	1.56	3.12	" " " " " "
Pilot	Matron	2 1/2	.40	1.00	" " " " " "
Summers	Oper.	2	3.00	6.00	even, late show Sat. night
Jones	"	1 day	15.00	15.00	off reg. shift
"	"	1 Wk.	91.00	91.00	vacation pay, should have been pd. 4/25
White	"	1	5.00	5.00	late show Sat. nite
Shuff	"	1 day	15.00	15.00	worked for Jones
Kappel	S/Hand			51.65	15.00 extra Shows, 3.00 bldg. platform
Clarlin	"			25.15	15.00 " " " " 18.65 back pay
Hickel	"			17.50	" " " " " " 10.15 " "
McGowan	"			24.00	" " " " " " 2.50 " "
"	"				" " " " " " 3.00 " "
"	"				" " " " " " 5.00 Sat. nite,
"	"				" " " " " " 5.00 bldg. platform
Nette	"			15.00	" " " " " "
Pearcey	"			17.00	" " " " " "
Truner	"			17.00	" " " " " " 2.00 back pay
Lawman	"			2.00	back pay
Leader				52.00	
Sidman @ \$36.00				288.00	Stand by band for Frankie Carle

SEPARATION DATA ON ALL EMPLOYEES DROPPED FROM PAY ROLL THIS WEEK:

EMPLOYEE PAY ROLL THIS WEEK:		
NAME	POSITION	REASON EMPLOYEE NOT ON PAY ROLL
Jimmy Cunningham Betty Oylar	Usher Usherette	Resigned off - sick

# THEATRE PAY ROLL

COMPANY:	RECAPITULATION						
	No.	BASIC SALARY	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
					FED. O. A.	FED. I. T.	
THEATRE:							
CITY:							
WEEK ENDING:							
APPROVED FOR PAYMENT:							
<i>[Signature]</i> MANAGER							
AMOUNT PAID OUT BY:							
TOTAL PAID							
SHORT OR OVER IN CASH THIS WEEK							
AMOUNT OF ESTIMATED PAY ROLL CHECK NO.							

NAME	FED. I. T. EXEMPTIONS	POSITION	HOURLY WORKERS		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS		CASH PAID
			HRS.	RATE	HRS.	AMOUNT			FED. O. A.	FED. I. T.	
Ange Lombardi		2 Leader					52.00	52.00	.52	5.30	46.18
Dalbert Beyer		1 Sideman					36.00	36.00	.36	4.40	31.24
Harry Clark		3 "					36.00	36.00	.36	.80	34.84
Reginald Light		1 "					36.00	36.00	.36	4.40	31.24
John Marvin		3 "					36.00	36.00	.36	.80	34.84
Wilber Mathias		3 "					36.00	36.00	.36	.80	34.84
Robert O'Dell		1 "					36.00	36.00	.36	4.40	31.24
James Scroggy		1 "					36.00	36.00	.36	4.40	31.24
Glen Tripp		4 "					36.00	36.00	.36	-	35.64
Total 27							240.00	240.00	3.40	25.30	211.30

**GENERAL COUNSEL'S EXHIBIT 13.**

**Telegram, Nov. 18, 1947, James C. Petrillo to  
Miss Janet Tremaine.**

**FDG GENERAL ARTISTS CORP.**

**WUX NEW YORK, N. Y.**

**November 18, 1947**

Miss Janet Tremaine      General Artists Corporation  
AS PER TELEPHONE CONVERSATION RAY EBERLY  
AND HIS ORCHESTRA CANNOT APPEAR AT THE  
PALACE THEATRE IN AKRON OHIO UNTIL THIS  
THEATRE HAS REACHED AN AGREEMENT WITH  
LOCAL 24 OF THE AMERICAN FEDERATION OF  
MUSICIANS.

**JAMES C. PETRILLO.**



**GENERAL COUNSEL'S EXHIBIT 13-A.****Stipulation re Exhibit 13.**

It is hereby stipulated for purposes of the above entitled case by John H. Garver, Counsel for the General Counsel, and Herschel Kriger, Attorney for the Respondent, as follows:

1.—That Miss Janet Tremaine, if called to testify, would testify that she has been an employee of the General Artists Corporation for about the past ten years; and that on or about November 18, 1947, General Artists Corporation received a telegram corresponding to the document marked for identification in the above case as General Counsel's Exhibit No. 13;

2.—That the document referred to above is a true and accurate copy of the telegram received, as described in the paragraph 1 above;

3.—That the authenticity of the telegram is not challenged, but Respondent does not waive any other objections which it may have as to relevancy and materiality and any other objections to admissibility as may be reflected by the Record;

Executed this 4th day of April, 1950;

JOHN H. GARVER,

*Counsel for the  
General Counsel.*

HERSCHEL KRIGER,

*Attorney for the  
Respondent.*

**GENERAL COUNSEL'S EXHIBIT 14;**

**Letter, Feb. 24, 1949, L. O. Teagle to Ronald Gamble.**

**AMERICAN FEDERATION OF MUSICIANS,**

**Local No. 24, of Akron, Ohio.**

**February 24, 1949.**

Mr. Ronald Gamble, Manager,  
Palace Theatre,  
41 S. Main Street,  
Akron, Ohio.

Dear Mr. Gamble:

The Executive Board of this Local will meet on the third floor of the Mayflower Hotel, Akron, Ohio at approximately 1:30 P. M. on Sunday, March 6, 1949. At that time, you are privileged to appear before said board.

Very truly yours,

L. O. TEAGLE, *Secretary,*  
*American Federation of Musicians,*  
*Local #24.*

LOT:im

## THEATRE PAY ROLL

## RECAPITULATION

COMPANY:				BASIC SALARY	EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS			CASH PAID
Akron Palace Theatre Corp.							FED. O. A.	FED. I. T.	Exempt	
THEATRE:	Palace	No	12	1040.01	149.57	1189.58	10.56	99.86	135.00	1078.22
CITY:	Akron		12A	384.00	15.00	379.00	5.90	58.20		259.00
WEEK ENDING:	7/2/47		5	489.00	192.00	681.00	6.81	90.10		584.09
APPROVED FOR PAYMENT:			7	255.00	255.00	510.00	5.10	47.00		457.90
MANAGER										
AMOUNT PAID OUT BY:										
		TOTAL PAID		2148.01	611.57	2759.58	28.27	275.10	135.00	2469.21
		SHORT-OR OVER IN CASH THIS WEEK								
										8.90
		AMOUNT OF ESTIMATED PAY ROLL CHECK NO. 11604								2469.11

NAME	FED. I. T. EXEMPTIONS	POSITION	HOURLY WORKERS		BASIC SALARY		EXTRAS & OVERTIME	TOTAL EARNINGS	DEDUCTIONS			CASH PAID
			HRS.	RATE	HRS.	AMOUNT			FED. O. A.	FED. I. T.	Exempt	
Sid Holland		3 Mgr.				155.00		155.00	-	19.10	135.00	115.90
Paul M. Grubb		2 A/Mgr.				80.00		80.00	.80	8.50		70.70
Conrad Reining		2 2nd A/Mgr.				42.50		42.50	.45	8.80		58.47
Bette Butler		1 Bkkr.				45.00		45.00	.45	6.00		58.55
Sub Total #12						302.50		302.50	1.69	37.20	135.00	265.62
Elizabeth Hill		1 Cashier			58	21.98	1.22	23.18	.23	2.20		20.75
Elaine Parsons		1 "			58	21.98	.80	22.26	.23	2.00		20.04
Marcella Sowick		1 "			58	18.80	1.52	19.82	.20	1.50		18.12
Juanita Ellinger		1 "	29	.61		17.69		17.69	.18	1.20		16.31
Betty Cylar		1 "	52	.61			19.52	19.52	.20	1.50		17.82
Sub Total #12						79.91	22.56	102.47	1.03	8.40		93.04
Adam G. Goels		4 Ch/Serv.			40	22.00	13.20	35.20	.35	-		34.85
Leslie Beaty		2 Doorman			50	15.00	8.00	18.00	.18	-		17.82
Harry Cole		1 "	20	.50		10.00	11.25	21.25	.21	1.80		19.24
Jim Cunningham		1 "	28	.45		12.60	.80	13.40	.13	.50		12.77
Jack Fagan		1 "	25	.45		11.25	11.20	22.45	.22	2.00		20.23
Carmen Myers		1 "	55	.50		17.50	4.95	22.45	.22	2.00		20.23
Dick Dickerson		1 B.S.	70	.50		35.00		35.00	.35	4.20		30.45
Earl Dorer		1 Usher	47	.40		18.80		18.80	.18	1.80		17.82
Tom Guinter		1 "	39	.45		17.55		17.55	.18	1.20		16.17
Earl Havid		1 "	42	.45		18.90		18.90	.19	1.80		17.41
Kenneth Rhoades		1 "	59	.45		26.55		26.55	.27	2.70		23.58
Glyde Rhodes		1 "	34	.45		15.30		15.30	.15	.80		14.35
Bill Sanders		1 "	27	.45		12.15	6.00	18.15	.18	1.80		16.87
Catherine Allruts		1 Usherette	24	.45		10.80		10.80	.11	-		10.69
Frances Church		1 "	31	.40		12.40		12.40	.12	.80		11.98
Evalyn Holcomb		1 "	29	.40		11.60		11.60	.12	.10		11.38
Eleanor Pickett		1 "	44	.40		17.60		17.60	.18	1.20		16.22
Shirley Rowan		1 "	35	.40		14.00		14.00	.14	.70		13.16
Donna Turner		1 "	35	.45		12.60		12.60	.15	.80		12.17
Sub Total #12						311.80	50.40	362.00	5.62	21.70		350.68
												14.05

Evalyn Holcomb	1 "	29	.40			11.60		11.60	.12	.10		11.38
Eleanor Pickett	1 "	44	.40			17.60		17.60	.18	1.20		16.22
Shirley Rowan	1 "	35	.40			14.00		14.00	.14	.70		13.16
Donna Turner	1 "	35	.45			12.60		12.60	.15	.80		12.17
Sub Total #12						311.80	50.40	362.00	5.62	21.70		350.68
Malvin Coteat	1 Porter				50	15.00		15.00	.15	.80		14.05
Sam Hardy, Jr.	5 "				50	15.00	.50	14.50	.16	-		14.35
Eugene Stone	1 "				50	15.00	17.00	32.00	.32	3.70		27.98
Hayes Toy	7 "				50	15.00		15.00	.15	-		14.85
Sub Total #12						60.00	18.50	78.50	.77	4.50		71.23
Rose Young	1 H/Cleaner				50	20.00	7.57	27.57	.27	2.90		24.20
Katie Pinches	1 Cleaner				50	20.00		20.00	.20	1.70		18.10
Katie Vlock	1 "				50	20.00		20.00	.20	1.70		18.10
Anna Bilandzia	5 "				50	20.00		20.00	.20	-		19.80
Julia Demiter	5 "				50	20.00		20.00	.20	-		19.80
Elis. Kedra	1 "				50	20.00		20.00	.20	1.70		18.10
Henry Folk	2 H/Watch.				42	35.00		35.00	.35	2.40		32.25
Homer Deem	1 S/Police				54		40.50	40.50	.41	5.10		34.99
Sub Total #12						155.00	47.67	202.67	2.03	16.50		185.34
Samuel Myers	4 Eng.				48	65.00	8.12	73.12	.73	5.20		67.19
James R. Myers	1 "				48	50.00	3.12	53.12	.53	7.50		45.29
Sub Total #12						115.00	11.24	126.24	1.26	12.60		112.48
Hazel Pilot	5 Mtron				26	18.00	1.00	17.00	.17	-		16.83
Total #12						1040.01	140.57	1189.58	10.56	99.86		1078.22
L. M. Summers	4 Oper.					91.00	4.50	95.50	.96	9.10		85.44
Harry Jones	5 "					91.00	21.50	89.50	.70	2.70		86.10
R. A. White	2 "					91.00		91.00	.91	12.40		77.69
Charles Waggoner	5 "					91.00	6.00	97.00	.97	11.50		84.53
Marvin Faber	1 "						13.00	13.00	.13	.50		12.57
Fray Ryder	2 "						15.00	15.00	.15	-		12.87
Total #12A						364.00	15.00	379.00	3.80	36.20		349.00
William Kappel	2 S/Hand					70.00	36.00	106.00	1.06	15.50		89.44
Harold Claflin	5 "					70.00	36.00	106.00	1.06	15.50		91.44
Wm. Nicol	2 "					70.00	27.00	97.00	.97	15.50		82.53
John McGowan	2 "					70.00	30.00	100.00	1.00	14.50		84.50
John Botte	5 "					70.00	21.00	91.00	.91	10.40		79.69
Ralph Claflin	1 "					70.00	21.00	91.00	.91	14.40		75.69
Delbert Bruner	4 "					69.00	21.00	90.00	.80	8.30		80.80
Total #5						489.00	192.00	681.00	6.81	90.10		584.09

NATIONAL LABOR RELATIONS BOARD

EXHIBIT NO. 12

THE MATTER OF

TOTALS

WITNESS

NOTE: PLEASE FILL OUT ALL SCHEDULES ON BACK OF THIS SHEET

GENERAL COUNSEL'S EXHIBIT  
Palace Theatre Payroll, July 2, 1947



**GENERAL COUNSEL'S EXHIBIT 15.**

Letter, Apr. 22, 1949, Leo M. Rappaport to American Federation of Musicians, Local No. 24, Akron, Ohio.

April 22, 1949.

American Federation of Musicians,  
Local No. 24,  
Room 518 Metropolitan Building,  
Akron 8, Ohio.

Attention: Mr. L. O. Tagle, Secretary.

Gentlemen:

We have been employed by Gamble Enterprises, Inc., operators of the Palace Theatre, in your city, to bring about the elimination of certain conditions which you have imposed upon the operation of said theatre, and to institute proceedings before the National Labor Relations Board, charging unfair labor practices, in the event the controversy cannot be settled by negotiation.

We are informed that you require the Palace Theatre to employ an orchestra composed of your members whenever a travelling band is engaged by that theatre for appearance on its stage, which band is, of course, composed of union musicians. In the alternative, you require the operators of the theatre to pay your members the same amount, even though they are not actually used. Such a practice is in direct violation of the Federal Laws upon the subject.

We had a similar situation in Indianapolis; and failing to obtain relief by negotiation with the local union, we filed a complaint against the Indianapolis Local with the National Labor Relations Board, which Board ultimately entered a finding denying the right of the local union to make any such demands upon the managers and operators of the theatre. As a matter of fact, before the action came to trial, the attorneys for the local union agreed that they had no right to make any such demands, and the Board thereupon entered an appropriate order to that effect.

If desirable, the writer will be glad to meet you in Akron or in Indianapolis to discuss this matter, if you



believe that it can be settled without the filing of a formal complaint. Otherwise, we will proceed with the action as outlined.

We request a prompt answer.

Very truly yours,

RAPPAPORT, KIPP and LIEBER,  
By LEO M. RAPPAPORT.

LMR/F

cc to Mr. LeRoy J. Furman—This letter was written after receiving yours of April 20th, with enclosures.

**GENERAL COUNSEL'S EXHIBIT 16.**

Letter, Apr. 26, 1949, L. O. Teagle to Leo M. Rappaport.

AMERICAN FEDERATION OF MUSICIANS,

Local No. 24, of Akron, Ohio.

April 26, 1949.

Mr. Leo M. Rappaport,  
Illinois Building,  
Indianapolis 4, Indiana.

Dear Sir:

Please refer to your communication of April 22nd, 1949, wherein you mention that your firm has been employed by Gamble Enterprises, Inc., operators of the Palace Theatre, Akron, Ohio, for the purpose of bringing about the elimination of certain conditions.

The Executive Board of this Local meets May 1, 1949, at which time your letter will be given consideration. It is my personal belief that some action will be taken by said Board and we will notify you accordingly.

Very truly yours,

L. O. TEAGLE, Sec'y.,  
A. F. of M. #24.

LOT:1

**GENERAL COUNSEL'S EXHIBIT 17.****Memorandum dated May 8, 1949.**

May 8th, 1949.

Provided a satisfactory scale of wages is agreed upon between the parties, the Palace Theatre will employ local musicians whenever it produces a show on its stage for which it hires talent or acts other than traveling instrumental bands or orchestras and when such acts do not constitute a part of an assembled unit which will include a traveling band or orchestra and such unit is contracted for by the Palace Theatre as a unit.

The Palace Theatre is unable to give any guarantee of the number of such employment or to agree that any given percentage of stage attractions will fall within the classifications of shows for which local music will be employed, because it is unable to obtain such guarantees from booking offices selling such talent.

No local musicians will be employed in connection with any stage attraction composed either of instrumental music alone or of instrumental music with acts which are bought by the theatre as a complete unit, regardless of where such unit may be assembled.

L.M.R.

L.O.T.

**GENERAL COUNSEL'S EXHIBIT 18:**

**Letter, May 12, 1949, L. O. Teagle to Leo M. Rappaport.**

**AMERICAN FEDERATION OF MUSICIANS,**

**Local No. 24, of Akron, Ohio.**

**May 12, 1949.**

Mr. Leo M. Rappaport,  
Illinois Building,  
Indianapolis 4, Indiana.

Re: Palace Theatre, Akron, Ohio.

Dear Mr. Rappaport:

The Executive Board of this Local, at a meeting May 11, 1949 decided to refer the entire subject matter to our Federation attorneys for advice. When we receive a reply from them, we will contact you and make plans for further negotiations.

Very truly yours,

L. O. TEAGLE, *Secretary,*  
*American Federation of Musicians,*  
*Local #24.*

LOT:im

**GENERAL COUNSEL'S EXHIBIT 20.**

**Letter, June 24, 1949, Gamble Enterprises, Inc.  
to L. O. Teagle.**

June 24, 1949.

Mr. L. O. Teagle, Secretary,  
American Federation of Musicians, Local #24,  
Room #518, Metropolitan Building,  
Akron 8, Ohio.

Dear Sir:

You are hereby notified that we intend to resume our former practice, interfered with by you and your International officers since the fall of 1947, to engage travelling bands, and accompanying acts, forming what is known as a "package unit," to appear from time to time on our stage at the Palace Theatre in Akron, Ohio. If there is any interference on your part, or that of the International, to this procedure, we shall take recourse to the law, including a civil suit for damages.

We furthermore hereby notify you that we intend, if possible, to engage vaudeville acts, unaccompanied by any travelling stage band, for appearance on our stage at the Palace Theatre, and in that event, to employ local musicians to furnish the music accompanying such vaudeville acts. For that purpose, we are willing to negotiate a contract with you for a reasonable number of men, at a reasonable scale of pay, and reasonable working conditions, covering employment of your members for such vaudeville acts. Because of the impossibility of getting commitments on any fixed number of such vaudeville shows, we cannot make a commitment for any definite number of such appearances. In connection with such a contract, if you care to enter into it, we must have your assurance that you will not insist upon employment when we have travelling stage bands and accompanying acts. Such a contract should be made for the usual period of one, two or three years.



We are ready to negotiate immediately, but prolonged delay in such negotiations will not prevent us from engaging travelling stage bands, as stated in this letter.

Very truly yours,

GAMBLE ENTERPRISES, INC.

Per

Manager

RG:G

cc: Mr. Leo M. Rappaport,  
Mr. Philip Fusco.

**GENERAL COUNSEL'S EXHIBIT 21.**

Letter, July 1, 1949, American Federation of Musicians,  
Local No. 24, Akron, Ohio, to Gamble Enterprises,  
Inc.

**AMERICAN FEDERATION OF MUSICIANS**

Local No. 24, of Akron, Ohio  
Akron 8, Ohio

July 1, 1949

Gamble Enterprises, Inc.  
c/o Palace Theatre  
Akron, Ohio

Attention: Mr. Ron Gamble, Manager  
Gentlemen:

In answer to your letter of June 24th, you hereby are advised that Local No. 24 of American Federation of Musicians will be pleased to meet with your representatives for the purpose of collective bargaining and negotiation of a collective bargaining agreement at such time and place as may be mutually agreeable.

Incidental to such negotiations, our position is that the same should cover all phases of the relationship between your concern and our members and the union, and to that end we are willing to bargain collectively to the end that understanding may be reached on all issues. We regret that you state, "in connection with such a contract, if you care to enter into it, we must have your assurance that you will not insist upon employment when we have travelling stage bands and accompanying acts" and that you further state such a contract "should be made for the usual period of one, two or three years." The matter of frequency of employment of local musicians and the conditions thereof is properly a subject for collective bargaining, and your prefacing your willingness to enter into collective bargaining with the condition that we must relinquish our right to bargain on one of the issues that may arise between us obviously is in itself an unfair labor practice within the meaning of the Labor Management Re-

lations Act. Furthermore, the length of the period of contract likewise is a subject for collective bargaining, and cannot be stipulated unilaterally in advance by either party.

We must further insist that such meetings for the purpose of collective bargaining be held in Akron, where our committee is available, and we here note that it is your obligation under the Act to make available here responsible agents authorized to negotiate such agreement. We make this observation because of the insistence last week of your attorney that we come to Indianapolis to see him if we wished to discuss the matter further.

We also take this opportunity again to deny, both generally and specifically, the charge made in the first paragraph of your letter, that there was any interference, either by the local union or the international, in your presentation of so-called "package units." We further must note that threatening to file suit for civil damages hardly connotes your willingness to bargain collectively in good faith, as required by the Act.

We would appreciate your further suggestions as to the time and place of the meetings.

Very truly yours,

AMERICAN FEDERATION OF MUSICIANS, LOCAL # 24

By: (Signed) L. O. TEAGLE, *Secretary*

cc: Mr. James C. Petrillo

Mr. Herschel Kriger

**GENERAL COUNSEL'S EXHIBIT 22.**

**Letter, August 4, 1949, James C. Petrillo  
to Charles E. Hogan.**

August 4, 1949

Mr. Charles E. Hogan  
203 N. Wabash Ave.  
Chicago, Ill.

Dear Sir:

We have been advised that you contemplate booking Roy Acuff into a theatre in Akron, Ohio. The local there advises us that no agreement has been reached between the theatre and our local union.

Under the circumstances, Federation members are not permitted to play there until negotiations for an agreement are consummated.

Very truly yours,

**JAMES C. PETRILLO**  
*President*

ARR: bk



**INTERMEDIATE REPORT AND RECOMMENDED  
ORDER OF TRIAL EXAMINER.**

(Dated May 24, 1950.)

**STATEMENT OF THE CASE.**

Upon an amended charge duly filed by Gamble Enterprises, Inc., Akron, Ohio, herein called the Employer or the Theatre Management, the General Counsel of the National Labor Relations Board,<sup>1</sup> by the Regional Director of the Eighth Region (Cleveland, Ohio), issued his complaint dated January 3, 1950, against American Federation of Musicians, Local No. 24, of Akron, Ohio, herein called the Respondent or the Union, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (6) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the charge and the complaint, together with notice of hearing, were duly served upon the parties.

With respect to unfair labor practices, the complaint alleged in substance that during February, 1949, and at all times since, the Respondent has violated Section 8 (b) (6) of the Act, in that it has:

(1) Insisted, demanded and requested that the Employer pay for a local orchestra whenever a traveling band or stage show is presented at the Theatre, notwithstanding the Employer does not need, does not want, and cannot use such local orchestra;

(2) Insisted, demanded, and requested that the Employer pay for "standby" musicians at the Theatre;

(3) Insisted, demanded, and requested an agreement or understanding that the Employer pay local musicians for services not used or not to be used at the Theatre; and

<sup>1</sup> The General Counsel and his representative at the hearing will be called herein the General Counsel; the National Labor Relations Board, the Board.

(4) Interfered with, prevented, and induced orchestras, bands, and stage shows to not perform for the Employer at the Theatre unless and until provision would be made for payment to local musicians for services not used or not to be used.

In its duly filed answer the Respondent denied the commission of the alleged unfair labor practices.

Pursuant to notice a hearing was held at Akron, Ohio, on March 14, 15, 16, 1950, before William E. Spencer, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented by counsel and participated in the hearing where full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to each. Ruling was reserved on Respondent's motion, made at the close of the General Counsel's case-in-chief and renewed at the close of the hearing, to dismiss the complaint because of failure of proof. That motion is disposed of by the findings made below. There was oral argument before the Trial Examiner at the close of the hearing, and the Respondent and the Employer have availed themselves of the opportunity afforded all parties to file briefs with the undersigned.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

### FINDINGS OF FACT.

#### I. COMMERCE; THE BUSINESS OF THE EMPLOYER.

The following are stipulated facts:

Gamble Enterprises, Inc., a Washington corporation, with its principal office in New York City, operates 2 theatres in Ohio, 1 of which is the Palace Theatre in Akron, and 2 theatres in Pennsylvania. It also holds 50 per cent of the stock of Standard Theatres Corporation, which operates 26 theatres in Wisconsin. It also holds 50 per cent of the stock of Greater Indianapolis Amusement Company, which operates 4 theatres in Indianapolis, Indiana.

During the year 1948, the Palace Theatre in Akron (the situs of the dispute involved herein) paid film rentals in the amount of \$140,570.85, and in 1949 to May 19, 1949, it has paid a film rental of \$46,001.27. All films for the Palace Theatre are rented through the Cleveland branch offices of nine national distributors, including among others, Columbia Pictures Corp., Paramount Pictures, Inc., RKO Radio Pictures, Inc., and Republic Pictures Corp. Each of these distributors has branches in various cities of the United States. The money paid for film rental represents approximately 30 percent of the Palace Theatre's gross income.

During the year 1947, the Palace Theatre presented 15 stage shows, consisting of traveling bands and other talent, for which the sum of \$73,024.21 was paid, and in 1946 the theatre presented 19 stage shows, for which the sum of \$89,556.04 was paid.

During the year 1948, the Palace Theatre purchased supplies, such as advertising materials and equipment, from outside the State of Ohio, in the amount of \$4,473.37, and during 1949 to May 19, 1949, such purchases from outside the State totalled \$958.79. These purchases represent approximately 50 percent of all purchases for such materials made by the theatre.

Gamble Enterprises, Inc., pays annual film rentals for all of its theatres to national distributors in an amount in excess of \$1,500,000. It acquired the Palace Theatre in March 1947.

In addition to the foregoing stipulated facts, the credited testimony of Ronald W. Gamble, manager of the Palace Theatre in Akron, establishes that Gamble Enterprises, Inc., in addition to the 4 theatres which it owns in Ohio and Pennsylvania, exclusively directs and operates the 26 Wisconsin theatres of Standard Theatres Corporation, and jointly with the Fourth Avenue Amusement Company of Louisville, Kentucky, directs and operates 4 theatres in Indianapolis, Indiana. Ted R. Gamble, with his office in New York City, is in charge of labor relations and policy matters relating to the theatres directed and operated by Gamble Enterprises, Inc.

While the various theatres owned and/or controlled and operated by Gamble Enterprises, Inc., do not represent as close knit and integrated a chain as is represented by the Balaban and Katz chain of theatres over which the Board assumed jurisdiction in Case 8-RC-509, and consequently the Palace Theatre of Akron, Ohio, is not integrated in a national system to the degree that obtained in this earlier case, nevertheless ultimate control over its labor relations rests in the New York office of Gamble Enterprises, Inc., and the policies which govern its operation, such as the character of the entertainment which it is to offer, are determined there. I am therefore unable to regard it as such a predominantly local enterprise that the Board should, as a matter of policy, refuse to assert jurisdiction over it.

I find that Gamble Enterprises, Inc., is engaged in commerce within the meaning of the Act, and I recommend that the Board assert jurisdiction.

## II. THE LABOR ORGANIZATION INVOLVED.

American Federation of Musicians, Local No. 24 of Akron, Ohio, is a labor organization affiliated with the American Federation of Musicians:

## III. THE UNFAIR LABOR PRACTICES.

### A. Background.<sup>2</sup>

At all times material herein, the Palace Theatre of Akron, Ohio, was engaged in the showing of motion pictures, with an occasional appearance on its stage of a traveling or "name" band— i.e., an orchestra or band of national reputation. For at least several years prior to July 1947, it employed a local orchestra of nine musicians on all

<sup>2</sup> The matters set forth under this title, occurring in a period prior to the enactment of the Labor Management Act of 1947, or in a period more than 6 months prior to the filing of a charge in this case on May 16, 1949, are recited solely as background and no findings of unfair labor practices are predicated thereon. *Tennessee Knitting Mills, Inc.*, 88 NLRB No. 194; *Florida Telephone Corporation*, 88 NLRB No. 251; *Axelsson Mfg. Co.*, 88 NLRB No. 155.



occasions when a name band played an engagement at the theatre. During this period the local orchestra held regular rehearsals at the theatre, held itself available to the theatre for such services as might be required of it, but only on rare occasions did it actually provide music for the theatre.<sup>3</sup> It was for the most part what is now commonly known as a "standby orchestra." By this is meant that whenever a name band played engagements at the theatre, the members of the local orchestra were paid for the duration of the engagement although they did not actually provide music for the theatre. The records of the theatre show that the last engagement for which payment was made to the local orchestra was on July 2, 1947. All local musicians thus employed by the theatre were members of the Union, and paid into the Union's treasury tax on all wages received from the theatre.

Though no further payments were made to the local orchestra for engagements after July 2, 1947, there were seven performances of name bands on the stage of the theatre between that date and the week ending November 12, 1947.<sup>4</sup> During this period until late October, the Union made no objection to the appearance and performance of the traveling orchestras, and made no demands on the theatre relative to the employment of local musicians. In October, Logan O. Teagle, secretary and business manager of the Union, called at the office of Ronald W. Gamble, directing manager of the Palace Theatre and requested that he employ a "house" or "pit" orchestra for the theatre at such times as the theatre employed the services of a name band. At that time the theatre had scheduled the appearance on its stage on November 20 of the Ray Eberle band. Gamble asked Teagle what services the local orchestra could render the theatre on such occasions, and the latter

<sup>3</sup> Respondent's brief: "However, it seems clear that in the several years prior to the Act [Act as amended], they actually played only infrequently."

<sup>4</sup> In this connection it is noted that the Labor Management Relations Act, 1947, was enacted on June 23, 1947, effective August 22, 1947.

suggested that it could play intermissions, overtures, and "chasers."<sup>5</sup> Gamble testified:

I pointed out to him [Teagle] that the theatre had had a policy of paying for stand-by musicians for a good many years, and to my knowledge, and in such time as we had operated the theatre, even though we had paid for such services, and that we were entitled to them, that we had never used them; that we had no need for them; that actually they would be an interference in the operation of our theatre.

Teagle insisted on the employment of the local orchestra and stated to Gamble that the theatre would not be permitted to engage any further traveling name bands unless an agreement was reached on the employment of local musicians. Gamble referred to the scheduling of the Ray Eberle band on November 20, and told Teagle that if this band was allowed to play, the theatre would contract for no further engagements of traveling orchestras until an agreement could be reached with him. Teagle replied that this would not be acceptable to the Union.

Gamble was later advised by the agency through which he had booked the Ray Eberle band, that the agency had been advised by the office of James C. Petrillo, president of the American Federation of Musicians, with which the Union is affiliated, that the Eberle show would not be allowed to fill its engagement at the Palace Theatre. The following is a telegram, dated November 18, 1947, and signed by James C. Petrillo, addressed to General Artists Corporation, New York City:

AS PER TELEPHONE CONVERSATION RAY  
~~EBERLY~~ AND HIS ORCHESTRA CANNOT AP-  
PEAR AT THE PALACE THEATRE IN AKRON,

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<sup>5</sup> Gamble's testimony: "At that time, his [Teagle's] suggestion and recommendation was that we employ an orchestra to be in the pit to play overtures and intermissions. That is, a small musical prologue before the actual stage show went on, and some music after the show while the people were filing in and out of their seats."

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## OHIO UNTIL THIS THEATRE HAS REACHED AN AGREEMENT WITH LOCAL 24 OF THE AMERICAN FEDERATION OF MUSICIANS.

The Ray Eberle show did not fill its scheduled engagement at the Palace Theatre."

### *B. 1949 negotiations, first period.*

Following the incident of the Ray Eberle show, there were no further meetings between Gamble and Teagle until late 1948 or early 1949. Early in 1949, Gamble met with Teagle on a number of occasions at the latter's office and attempted to get Teagle's consent to the booking of name bands with accompanying vaudeville acts. Teagle's position, articulated in the 1947 conferences, remained unchanged; i.e. his consent to the booking of name bands was conditioned on the employment of the local orchestra. By letter dated February 24, 1949, Teagle extended to Gamble an invitation to appear before the Respondent's executive board, presumably for the purpose of affording Gamble an opportunity to state his position before this board, but Gamble did not appear. By letter dated April 22, 1949, Leo M. Rappaport, attorney for Gamble Enterprises, Inc., informed Teagle that his law firm had been employed "to institute proceedings before the National Labor Relations Board, charging unfair labor practices, in the event the controversy cannot be settled by negotiation," and offered to meet with Teagle. A meeting of representatives of the parties occurred on May 8 at Teagle's office.

At the May 8 meeting, the Respondent's representatives made several alternate suggestions for the employment of a local orchestra. One suggestion, previously advanced, was that the local orchestra be employed to supplement the name band by playing an overture or "curtain-raiser," during intermissions, and a "shirt-tail" or "chaser".

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" Findings under this title of negotiations between Gamble and Teagle are based on the credited testimony of Gamble. Teagle's recollections of these earlier meetings was so meagre as to afford no proper basis for findings.

after the name band had completed its performance. For such an engagement the name band would perform on the stage while the local band would play in the orchestra pit. Another suggestion was that when a name band was employed which provided vaudeville acts not an integral part of its own ensemble,<sup>7</sup> the local orchestra be employed to provide the music for such acts.<sup>8</sup> A third suggestion was that the local orchestra perform from the stage, in the same manner as a traveling or name band, with accompanying vaudeville acts which the management would book into the theatre. Still another proposal was that a local or "pit" orchestra be employed 50 percent of the times that traveling or name bands were engaged. The position of the theatre management, in brief, was that the local orchestra had no drawing power, and that its performance in the pit simultaneously with a name band, not only would be lacking in entertainment value but would actually constitute an interference with the performance of the name band. The theatre management did, however, agree, with certain reservations, to the employment of the local orchestra to furnish music for vaudeville acts independently booked by the theatre, and at the conclusion of the meeting the following memorandum was prepared and initialed by Teagle and Rappaport:

Provided a satisfactory scale of wages is agreed upon between the parties, the Palace Theatre will employ local musicians whenever it produces a show on its stage for which it hires talent or acts other than

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<sup>7</sup> The distinction is made between what is commonly called a "unit show," consisting of a traveling band which carries vaudeville acts as an integral and regular part of its performances, and a traveling band (usually a dance band) which engages vaudeville acts temporarily for the purpose of one or more theatre engagements.

<sup>8</sup> Findings on the May 8 meeting are based on a reconciliation of the testimony of Teagle, Reginald Light, Gamble, and Rappaport. It is not clear in all instances that the testimony relied on was restricted to the May 8 meeting, but if all the proposals related were not made at the May 8 meeting they were, in any event, made during the 1949 period of negotiations.



traveling instrumental bands or orchestras and when such acts do not constitute a part of an assembled unit which will include a traveling band or orchestra and such unit is contracted for by the Palace Theatre as a unit.

The Palace Theatre is unable to give any guarantee of the number of such employment or to agree that any given percentage of stage attractions will fall within the classifications of shows for which local music will be employed, because it is unable to obtain such guarantees from booking offices selling such talent.

No local musicians will be employed in connection with any stage attraction composed either of instrumental music alone or of instrumental music with acts which are bought by the theatre as a complete unit, regardless of where such unit may be assembled.

It was the testimony of the General Counsel's witnesses, Gamble and Rappaport, that this memorandum represented an agreement among the representatives of the parties and was initialed as such. Respondent's witnesses, Teagle and Reginald Light, Respondent's president, testified that the memorandum merely incorporated management's offer and denied that there was an agreement on its terms. Admittedly, if there was agreement on the matter set forth in the memorandum it was merely tentative on the part of Respondent's representatives, and definitive and final agreement was never reached. It is clear from the testimony of both Teagle and Light, that the Respondent was seeking a contract of definite duration which would contain some guarantee of the number or percentage of engagements of the local orchestra, whereas it was the position of the theatre management that no such guarantee could be given because of the uncertainties accompanying the booking of vaudeville acts.

By letter dated June 24, Gamble advised the Respondent that the theatre management would resume its former practice of engaging "traveling bands, and accompanying

acts, forming what is know as a package unit, to appear from time to time on our stage at the Palace Theatre in Akron, Ohio." Continuing, the letter stated:

We furthermore hereby notify you that we intend, if possible, to engage vaudeville acts, unaccompanied by any travelling stage band, for appearance on our stage at the Palace Theatre, and in that event, to employ local musicians to furnish the music accompanying such vaudeville acts. For that purpose, we are willing to negotiate a contract with you for a reasonable number of men, at a reasonable scale of pay, and reasonable working conditions, covering employment of your members for such vaudeville acts. Because of the impossibility of getting commitments on any fixed number of such vaudeville shows, we cannot make a commitment for any definite number of such appearances. In connection with such a contract, if you care to enter into it, we must have your assurance that you will not insist upon employment when we have travelling stage bands and accompanying acts. Such a contract should be made for the usual period of one, two or three years.

We are ready to negotiate immediately, but prolonged delay in such negotiations will not prevent us from engaging travelling stage bands, as stated in this letter.

The Respondent replied to this communication by letter dated July 1, 1949, in which it agreed to meet with representatives of the theatre management for the purpose of "collective bargaining and negotiation of a collective bargaining agreement \* \* \*." Other material portions of the letter follow:

Incidental to such negotiations, our position is that the same should cover all phases of the relationship between your concern and our members and the union, and to that end we are willing to bargain collectively to the end that understanding may be reached

on all issues. We regret that you state "in connection with such a contract, if you care to enter into it, we must have your assurance that you will not insist upon employment when we have travelling stage bands and accompanying acts" and that you further state such a contract "should be made for the usual period of one, two or three years." The matter of frequency of employment of local musicians and the conditions thereof is properly a subject for collective bargaining, and your prefacing your willingness to enter into collective bargaining with the condition that we must relinquish our right to bargain on one of the issues that may arise between us obviously is in itself an unfair labor practice within the meaning of the Labor Management Relations Act. Furthermore, the length of the period of contract likewise is a subject for collective bargaining, and cannot be stipulated unilaterally in advance by either party.

By letter dated July 20, 1949, Gamble reiterated the willingness of the theatre management to negotiate with the Respondent on a contract, and stated, *inter alia*: "Our position is the same as yours in that said negotiations should cover all phases of the relationship between our concern and your members and the Union." Teagle replied to this communication by letter dated August 6, 1949, but in the interim the theatre management had contracted for the engagement of a name band.

### C. The Roy Acuff incident.

On July 26, 1949, the theatre management executed a contract with a Chicago booking agency for the appearance at its Palace Theatre in Akron on August 18, 1949, for an engagement of 4 days, of "Roy Acuff and His Grand Ole Opry," with the following accompanying acts:

Pop And His Jug Band

Rachael And Her Bashful Brother Oswald

Smoky Mountain Boys

Radio Dot & Smoky  
Joe Zarbins & Lannie  
Tommy Magness  
Fat Boy Wilson  
Uncle Dave Mason  
Sam. & Kirk McGee  
Cackle Sisters

Gamble informed Teagle of this booking and filed with him a copy of the contract which he had executed with Acuff's agent. The booking agent's signature was not affixed to this copy of the contract, but a completed contract was received by Teagle directly from the booking agent with letter of transmission dated August 3. Teagle also received a phone call and a telegram from the manager of the Acuff shows, inquiring if it would be satisfactory for the show to fill its engagement at the Palace Theatre in Akron. In each instance Teagle replied that no agreement had been consummated between the Respondent and the theatre management.

A few days after Gamble had advised Teagle of this booking, Acuff's booking agent called Gamble and advised him that the Acuff show would not fill its engagement at the Palace Theatre inasmuch as a letter had been received from Petrillo which had the effect of cancelling the engagement. Petrillo's letter, addressed to the booking agent and dated August 4, 1949, has the following text:

We have been advised that you contemplate booking Roy Acuff into a theatre in Akron, Ohio. The local there advises us that no agreement has been reached between the theatre and our local union.

Under the circumstances, Federation members are not permitted to play there until negotiations for an agreement are consummated.

The Roy Acuff show did not fill its engagement at the Palace Theatre.



D. 1949 negotiations, second period.

By letter dated August 17, 1949, Gamble requested the Respondent to submit a "draft of an Agreement concerning possible employment of musicians at the Palace Theatre." In his reply to this letter, dated September 14, Teagle stated that it did not appear "practical" for Respondent to submit a draft of a contract "in view of the adamant position which you heretofore have taken on some issues and your later apparent modification of such positions." By letter to Teagle dated October 13, Gamble reiterated his willingness to negotiate with the Respondent, and stated, *inter alia*:

I do not know just what you mean by saying that I have heretofore taken "an adamant position," and that I have later modified my position. The only point on which I have been firm is that our Theatre cannot afford to hire musicians for which it has no use, and that, therefore, we would not enter into a contract containing such a requirement. We are perfectly willing to negotiate with you for a contract for the services of the members of your Union when we have use for the same, but, of course, any contract entered into must be upon a basis of scale and working conditions which we can afford.

Teagle, by letter dated October 24, 1949, replied: "I have carefully studied the matters contained in your letter and am rather dismayed that you continue firm on your position relative to hiring of our local union members." After reiterating Respondent's willingness "to discuss all matters of mutual interest," the letter continues: "But, we further state that such discussion must include all matters between us which are the proper subject of collective bargaining and must not be tied down by prior conditions asserted by you."

Subsequent to this exchange of letters, on or about December 1949, Gamble approached Teagle with reference to contracting for the engagement of a vaudeville unit

which was then scheduled to appear at a Youngstown, Ohio, theatre. He proposed to engage the services of the local orchestra to accompany this vaudeville unit, provided the Respondent would permit him also to book a traveling name band without the local orchestra, for a separate engagement. Gamble testified concerning this proposal that vaudeville units were then available for local bookings. "We had had no experience with them," he testified, "but we were perfectly willing to try them. It would fulfill his [Teagle's] demand to give the local musicians work, something to do, that if they [the Union] would untie our hands insofar as any guarantees were concerned, that we would be perfectly willing to try one. He [Teagle] was unwilling to try to untie my hands as far as any extended period was concerned, but did agree that I could bring in a show. I pointed out to him that he had already made me a better offer than that, that I could bring in a show for a show; that at least if I started off with this one, I should be allowed to bring in two, both this one from Youngstown and then a traveling name band." Gamble's proposal was agreed upon; it being understood that both shows would appear within a period of 60 days, but when Gamble submitted his proposal to his own New York office it was rejected.

There appear to have been no further negotiations of moment between the Respondent and the theatre management.

#### *E. The issues; conclusions.*

During the first two or three decades of this century theatres in this country could be roughly classified in three groups: vaudeville houses which offered independent and separate vaudeville acts, usually accompanied by a local orchestra; the "legitimate" theatre where the spoken drama was performed; and motion picture houses where local orchestras were frequently employed to furnish background music for the then silent motion pictures. In time,

the popularity of motion pictures began to crowd vaudeville "off the scene," and there developed what was then called combination houses, showing partly vaudeville acts and partly motion pictures. With the advent of sound or talking motion pictures, the popularity of vaudeville suffered a further decline, and inasmuch as sound pictures provided their own musical background it was no longer profitable, in the case of many theatres, to employ a local orchestra. Many theatres which had previously operated as vaudeville or combination houses, now adopted a straight picture policy and, in order to give variety to their offerings, engaged traveling stage bands of national reputation for limited engagements. The tenure of employment of local orchestras, precarious from the advent of motion pictures, became increasingly strained and presently the personnel of many local theatre orchestras throughout the country were faced with unemployment.

It was this general situation, with many involvements which it is not practicable to discuss here, that gave rise to the so-called stand-by orchestra, a device by which non-performing musicians were paid for "standing by" while another group of musicians, who were paid for their actual services, performed. It is clear that such an arrangement existed at the Palace Theatre in Akron prior to the summer of 1947, although there had been no written contract of employment between the local orchestra and that theatre for a period of at least 15 years. It is equally clear from the legislative history of the Labor Management Relations Act, 1947, that Congress intended to restrict stand-by practices when it adopted Section 8 (b) (6) of the amended Act.

The House version of this section (H. R. 3020) was modeled on the Lea Act (Section 506 of Title V of the Communications Act, as amended) which, in turn, was designed to outlaw certain stand-by practices in the radio industry. The original Senate bill (S. 1126) contained no corresponding provision, and the bill as it was agreed on in conference and enacted into law, contained a modified

version of the House proposal.<sup>9</sup> Senator Taft, speaking in the Senate on the conference agreement, stated:

The provisions in the Lea Act from which the House language was taken are now awaiting determination by the Supreme Court, partly because of the problem arising from the term "in excess of the number of employees reasonably required." Therefore, the conferees were of the opinion that general legislation on the subject of featherbedding was not warranted at least until the joint study committee proposed by this bill could give full consideration to the matter. Since the matter of exacting money for services not to be performed borders definitely on extortion, the conferees agreed to the insertion of a paragraph (sec. 8 (b) (6)) which makes it an unfair labor practice to cause or attempt to cause employers to pay money under such circumstances. (93 Cong. Rec. 6601.)

illustrating the scope and application of Section 8 (b) (6), Senator Taft stated:

It is intended to make it an unfair labor practice for a man to say, "You must have 10 musicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway." That is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept. (93 Cong. Rec. 6603.)

Senator Ball, one of the proponents of the bill, speaking on the proposed amendment in opposition to the Presidential veto, had this to say:

There is not a word in that, Mr. President, about "feather bedding." It says that it is an unfair practice

<sup>9</sup> Section 8 (b) (6) provides:

It shall be an unfair labor practice for a labor organization or its agents—to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or to be performed.



for a union to force an employer to pay for work which is not performed. In the colloquy on this floor between the Senator from Florida and the Senator from Ohio, before the bill was passed, it was made abundantly clear that it did not apply to rest periods, it did not apply to speedups or safety provisions, or to anything of that nature; it applied only to situations, for instance, where the Musicians' Federation forces an employer to hire one orchestra and then to pay for another stand-by orchestra, which does not work at all. (93 Cong. Rec. 7683.)

Now, there is nothing in the language of this section which renders it illegal for an employer voluntarily to contract for the engagement of a stand-by orchestra and payment for services not rendered. It is only when a labor organization "causes or attempts to cause" an employer to engage, or to agree to engage,<sup>10</sup> in such practices that a violation occurs. Furthermore, the Board has construed the language "cause or attempt to cause" as meaning something more "than an insistent demand in collective bargaining." The following is the Board's rationale for this construction, quoted from its decision in the *International Typographical Union* case, 86 NLRB 115:<sup>11</sup>

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<sup>10</sup> It is interesting to note that by the explicit language "or agree to engage," Congress distinguished between the act of paying or delivering, and the *agreement* to pay or deliver, and thereby made the causing or attempt to cause the *agreement*, and the Act itself which would normally flow from the agreement, equally violative of the statute. Compare Section 8 (b) (2) of the Act, with its "to cause or attempt to cause an employer to discriminate," but which omits the equivalent language, "or agree to discriminate." It would appear therefrom that Congress intended to give a broader application to Section 8 (b) (6) than was intended in Section 8 (b) (2). See, however, *The Great Atlantic and Pacific Tea Co.*, 81 NLRB 1052.

<sup>11</sup> The practices complained of in the *International Typographical Union* case related to a species of "make-work" programs in connection with total employment in which actual services were rendered. I do not consider that the decision in that case is determinative of the issues present here.

The House bill, from which Section 8 (b) (6) was derived, proscribed only union activities in the form of a "strike or other concerted interference with an employer's operations." Although the Conference bill substituted for these words "cause or attempt to cause," it also added the words, "in the nature of an exaction." The legislative history shows no disposition, on the part of the Senate at least, to broaden the provisions of the House bill with respect to the prohibited form of activity. It discloses instead that what Congress was concerned with were practices in the nature of "extortion." Clearly, a demand made at a bargaining table cannot be deemed "extortion," especially where that demand is for an item which has traditionally been regarded as part of the compensation to be paid to the employees in the unit as a group. To hold otherwise is to say that any demand in negotiations for an item which an employer or labor union does not want, but to which it accedes, however reluctantly, in order to reach a settlement on other issues, is "in the nature of an exaction." [The discussion is here continued in a footnote]. The words "cause or attempt to cause" also clearly imply something more than a bargaining demand. It is noteworthy that the words, "persuade or attempt to persuade," were used in Section 8 (b) (2) in the Senate bill as originally passed, but were changed in conference to "cause or attempt to cause." In explaining this substitution, Senator Taft said that the House conferees had objected to the Senate language "on the ground that it seemed inconsistent with the provisions guaranteeing all parties freedom of expression."

Turning now to the factual situation of the case at bar, it is necessary to determine whether or not the Respondent, in its 1949 negotiations with the Palace Theatre, attempted to cause the latter "to pay or deliver or agree to pay or deliver any money or other things of value in the nature of an exaction, for services which are not performed or to

be performed." This involves two considerations; the nature of its proposals and, if it is found that such proposals contemplated payment for services "not performed or to be performed," whether or not it attempted to cause the effectuation of these proposals within the meaning of the Act.

It is noted at the outset that the Respondent was primarily interested in the *employment* of its members by the theatre management. Its members were ready and willing to provide music for the Palace Theatre if management of the theatre would contract for their services. The Respondent made several proposals as to the character and scope of the proffered services, and each of these appeared to contemplate actual performance. At no time did the Respondent propose, in so many words, that the local orchestra be paid for services not rendered. It did propose, however, and insist, that whenever a traveling band played the theatre, the local orchestra should be employed also, or, as an alternative, that the local orchestra should be employed for a number of engagements equal to half the number of engagements of the traveling band.

As to the first proposal, I am of the opinion that this was nothing more or less than a proposal for a stand-by engagement. Such proffer of "services" was not, in my opinion, a proffer of real services at all, inasmuch as the employment of the local orchestra in the pit on occasions when a name band was performing from the stage, was undesirable from the viewpoint of the theatre management, added nothing to the drawing power of its attractions, and, in fact, as stated by Gamble, constituted a positive interference with the presentation of its stage attraction. It may be assumed that in all comparable situations, the stand-by orchestra is willing enough to give actual performances; musicians, being human, had no doubt rather play than not to play; but the services offered are not real services because they afford no actual consideration for the payment of "any money or other thing of value." Such a proposal, if accompanied by an "attempt to cause" its ef-

fection, "is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept." (See Senator Taft's statement, *supra*.)

The alternate proposal that the local orchestra be employed for 50 percent of the total number of engagements of traveling bands, as well as various other proposals which have been set forth in detail above, all have the same vice: they are in the nature of a proffer of services which the theatre management did not want, did not need, and was not willing to accept. Also, I believe there was implicit in all of Respondent's proposals the requirement, that whether they were acceptable to management or not, in any event the theatre management should employ and pay the local orchestra for at least half as many engagements as it contracted for with traveling bands, even though the local orchestra did not actually play any performances. True, this was never stated in so many words, but the persistence with which the Respondent insisted that the theatre management bargain on the employment of the local orchestra simultaneously with the appearance of traveling bands, discloses the true intent.

Thus, when in his June 24 letter Gamble stated that in negotiating a contract with the local orchestra, "we must have your assurance that you will not insist upon employment when we have travelling stage bands and accompanying acts," Teagle replied that Respondent's position was that a contract should "cover all phases of the relationship between your concern and our members and the union," and, further, that the Respondent "regretted" Gamble's position as articulated in his statement quoted above. Again, when Gamble, in answer to Teagle's accusation that the theatre management had taken an adamant position, stated in his letter of October 13, "The only point on which I have been firm is that our Theatre cannot afford to hire musicians for which it has no use, and that, therefore, we would not enter into a contract containing such a requirement," Teagle replied that he was "rather



dismayed that you continue firm on your position relative to hiring of our local union members."

In the closing negotiations of December 1949, it appeared that the parties might reach at least a limited agreement on the employment of the local orchestra, without stand-by requirements, but this collapsed when the theatre management refused to confirm Gamble's offer to provide an engagement for the local orchestra to furnish music for independently procured vaudeville acts. Obviously, such an agreement contemplated the actual performance of services. From this it may be argued, as it is argued generally by Respondent's counsel, that all the Respondent sought throughout the negotiations was the employment of the local orchestra for actual performances within the theatre. If it were possible to view the final unsuccessful attempt to reach an agreement in isolation from the entire course of negotiations, such a conclusion might appear to be a reasonable one. In proper perspective, however, the tentative offer made by Gamble in December 1949, is seen as a final effort on the part of the local theatre management to meet the Union's bargaining requirements short of capitulating to its demand for stand-by pay. This does not obscure the fact that there was operative throughout the negotiations the Union's thinly camouflaged requirement that whether or not the theatre management wanted, or intended to use, the services of the local orchestra, it should nevertheless contract with it for a number of engagements which would constitute at least one-half as many as the total number of engagements of a traveling band. Stripped to its essentials, it was as if the Respondent had said to the theatre management, "The members of our union are offering to play in your theatre, and want to play, but, in any event, whether you use their services or not, you must pay them for at least half as many engagements as you give to traveling bands." Such proposals, in my opinion, contemplated the effectuation of precisely such stand-by practices as Congress intended to restrict, and, if accompanied by such force, or threat of force, as to amount

to an "attempt to cause," constituted a violation of Section 8 (b) (6).

None of the usual manifestations on which an "attempt to cause" is commonly based, is present here. There was no strike nor threat of strike; no picketing nor threat of picketing; no withholding by the local orchestra of its services which the theatre management wished to procure. The coercive element essential to a finding of an "attempt to cause," if it exists at all in the instant situation, lies in the fact that lacking the consent of the Respondent, the theatre management was unable to bring into its theatre certain name or traveling bands for whose services it had contracted. By *withholding* its consent to the appearance at the local theatre of a name band, it is argued, the Respondent "attempted to cause" the effectuation of its proposals. It is arguable, of course, whether the Respondent can be required under any circumstances to give its consent to the appearance on the stage of the local theatre of a traveling band, but a determination of the issue here rests on a much narrower base.

The Roy Acuff band, and presumably every other name band with which the theatre contracted, was affiliated with the American Federation of Musicians, not named as a party respondent in this case, and the contract of its booking agent with the theatre management provided, *inter alia*:

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

Section 3, of Article 18 of the Federation's Constitution and By-laws provides:

Traveling members appearing in acts with vaudeville units or presentation shows are not permitted to play for any other acts on the bill without the consent of the Local.

## Section 4 provides:

Traveling members cannot, without the consent of a Local, play any presentation performances in its jurisdiction unless a local house orchestra is also employed.

From the foregoing it is seen that when the Palace Theatre contracted for the services of the Acuff band, it agreed that if no contract had been consummated between it and the Respondent for the employment of the local orchestra, Respondent's consent for the Acuff band to appear would be required. That such consent would be withheld in the absence of an agreement between the local orchestra and the theatre management, is implicit in the terms of the Acuff contract. The theatre having voluntarily agreed to the procedure which resulted in the failure of the Acuff band to appear, it is difficult to see how the effectuation of this agreement constituted an attempt on the part of the local union "to cause" the theatre management to pay or deliver any money or other thing of value, in the nature of an *exaction*. The sole action taken by this Respondent, insofar as it is revealed by the record of this proceeding, in the matter of the Acuff band, was to notify the American Federation of Musicians and the booking agent who contracted with the Palace Theatre for the engagement of the Acuff band, that no agreement had been consummated between it, the Respondent, and the Palace Theatre. The actual cancellation of the engagement was made by Petrillo when he notified the booking agent that Federation members would not be permitted to play an engagement at the Palace Theatre until negotiations between it and the local union had been "consummated." Therefore, if pressure to a degree to amount to an "attempt to cause" was exerted in the instant situation, it was exerted by the American Federation of Musicians and by virtue of a contract which, as far as is shown here, was voluntarily accepted by the theatre management. The contract itself is not placed in issue under the pleadings of this case, but if it were, and it were found that the incorporation by reference of the Federation's constitution

and by-laws operated to perpetuate the practice of stand-by orchestras, there still would be lacking proof that the theatre management's assent to it was involuntary.<sup>12</sup> I am constrained to hold, therefore, that the evidence before me fails to establish that the Respondent attempted to cause an employer "to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or to be performed," and, therefore, that under the pleadings of this case there is a failure of proof to establish a violation of Section 8 (b) (6) of the Act. Accordingly, I shall recommend that the complaint be dismissed in its entirety.

### CONCLUSIONS OF LAW.

1. Gamble Enterprises, Inc., is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. The Respondent, American Federation of Musicians, Local No. 24 of Akron, Ohio, has not engaged in, and is not engaging in, any of the alleged unfair labor practices within the meaning of the Act.

### RECOMMENDATIONS.

Upon the basis of the foregoing findings of fact and conclusions of law, it is recommended that the complaint against American Federation of Musicians, Local No. 24 of Akron, Ohio, be dismissed in its entirety.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including

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<sup>12</sup> International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 294, A. F. of L., 87 NLRB No. 130.



rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 24th day of May, 1950.

WILLIAM E. SPENCER,  
*Trial Examiner.*

**COMPLAINANT'S EXCEPTIONS TO CONCLUSION OF  
LAW NO. 2 OF THE TRIAL EXAMINER'S INTER-  
MEDIATE REPORT AND RECOMMENDED ORDER.**

(Filed June 6, 1950.)

Complainant herewith excepts to the second paragraph of the Conclusions of Law contained in the Intermediate Report and Recommended Order of Trial Examiner, William E. Spencer, reading as follows:

"2. The Respondent, American Federation of Musicians, Local No. 24 of Akron, Ohio, has not engaged in, and is not engaging in, any of the alleged unfair labor practices within the meaning of the Act."

Respectfully submitted,

LEO M. RAPPAPORT,  
910 Illinois Building,  
Indianapolis 4, Indiana.

*Attorney for Complainant,  
Gamble Enterprises, Inc.*

**EXCEPTIONS OF COUNSEL FOR THE GENERAL  
COUNSEL.**

(Filed June 30, 1950.)

Now comes John H. Garver, Counsel for the General Counsel, and files exceptions to the following findings, conclusions and recommendations of the Trial Examiner in his Intermediate Report and Recommended Order issued on May 24, 1950 in the above-entitled proceedings:

**I.**

That "under the pleadings of this case there is a failure of proof to establish a violation of Section 8 (b) (6) of the Act." (I. R. page 15, lines 29-31.) [R. p. 366.]

II.

That "None of the usual manifestations on which 'an attempt to cause' is commonly based, is present here." (I. R. page 14, lines 10 and 11.) [R. p. 364.]

III.

That "when the Palace Theatre contracted for the services of the Acuff band, it agreed that if no contract had been consummated between it and the Respondent for the employment of the local orchestra, Respondent's consent for the Acuff band to appear would be required." (I. R. page 14, lines 55-58.) [R. p. 365.]

IV.

"That such consent would be withheld in the absence of an agreement between the local orchestra and the theatre management is implicit in the terms of the Acuff contract." (I. R. page 14, lines 58-60.) [R. p. 365.]

V.

"Therefore, if pressure to a degree to amount to an 'attempt to cause' was exerted in the instant situation, it was exerted by the American Federation of Musicians . . ." (I. R. page 15, lines 15-17.) [R. p. 365.]

VI.

That "the evidence . . . fails to establish that the Respondent attempted to cause an employer 'to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or to be performed' . . ." (I. R. page 15, lines 25-29.) [R. p. 366.]

VII.

That the "Respondent, American Federation of Musicians, Local No. 24 of Akron, Ohio, has not engaged in, and is not engaging in, any of the alleged unfair labor practices within the meaning of the Act." (I. R. page 15, lines 34-42.) [R. p. 366.]

## VIII.

That "the Complaint against American Federation of Musicians, Local No. 24 of Akron, Ohio, be dismissed in its entirety." (I. R. page 15, lines 47-49.) [R. p. 366.]

The undersigned respectfully submits the above conclusions of law and findings of fact of the Trial Examiner in his Intermediate Report are contrary to the facts and evidence and constitute errors in law, and that the National Labor Relations Board should reconsider these findings and conclusions of the Trial Examiner, and make new findings of fact and conclusions of law in accordance with the law and evidence, and issue an appropriate order in the premises.

In support hereof the undersigned files the attached Brief.

JOHN H. GARVER, *Attorney,*  
*Counsel for the General Counsel,*  
*National Labor Relations Board,*  
*Eighth Region.*

(Brief omitted.)

**DECISION AND ORDER OF THE NATIONAL LABOR  
RELATIONS BOARD.**

(Dated January 24, 1951.)

On May 24, 1950, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding finding that the Respondent has not engaged in, and is not engaging in, any unfair labor practices within the meaning of Section 8 (b) (6) of the National Labor Relations Act. Accordingly, he recommended that the complaint be dismissed, setting forth his reasons in his



Intermediate Report, a copy of which is attached hereto. Thereafter, the General Counsel, Gamble Enterprises, Inc., the charging party, and the Respondent filed exceptions to the Intermediate Report and briefs in support of their exceptions. On October 17, 1950, the Board heard oral argument at Washington, D. C., in which all parties participated.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.<sup>1</sup> The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, the arguments of counsel for the parties, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner insofar as they are consistent with the findings, conclusions, and order herein contained.

1. We agree with the Trial Examiner that Gamble Enterprises, Inc., is engaged in commerce within the meaning of the Act. We further find that because Gamble Enterprises, Inc., is a multistate enterprise, it will effectuate the policies of the Act to assert jurisdiction in this case involving the Palace Theatre in Akron, Ohio, one of the theatres operated by Gamble Enterprises, Inc.<sup>2</sup>

2. We agree with the Trial Examiner that the complaint herein should be dismissed, but we base our decision upon different grounds than did the Trial Examiner. The issue in this case is whether the activities complained of on the part of the Respondent violates Section 8 (b) (6) of the Act. Briefly, the record shows that, during the times

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<sup>1</sup> Respondent filed exceptions to rulings of the Trial Examiner admitting into evidence over the Respondent's objections certain testimony and two exhibits. The evidence objected to relates to an aspect of the case which we do not find necessary to consider in this decision and which does not affect our order herein. Accordingly, we find it unnecessary to rule upon the Respondent's exceptions numbered 4, 9, 10, 11, and 12.

material in this case, the Palace Theatre in Akron, Ohio, was used primarily for the exhibition of motion pictures with occasional appearances of traveling bands (generally bands of national reputation) as a supplement to the theatre's motion picture programs. Prior to July 1947, whenever a traveling band appeared for an engagement at the Palace Theatre, it was the practice of the management of the theatre to pay the members of a band composed of local musicians, who were members of the Respondent Union, a sum equal to the minimum union wage for a similar engagement, although the local band rarely performed and generally did not even appear at the theatre on the days for which they were paid. Between July 2 and November 12, 1947, (after enactment of the Taft-Hartley Act) there were seven appearances of traveling bands on the stage of the Palace Theatre. No payments were made to local musicians during this period of time and the Respondent voiced no objections. However, in October 1947, Logan O. Teagle, secretary, and business manager of the Respondent, requested Ronald W. Gamble, directing manager of the Palace Theatre, to employ a local orchestra whenever a traveling band performed in the theatre. Teagle asserted that no further traveling bands would be permitted to appear at the Palace unless an agreement was reached with the Respondent concerning the employment of local musicians. Gamble replied that the theatre had no need for local musicians, that in the past it had not availed itself of the services of local musicians although it had paid for their services, and that any performance by a local orchestra in conjunction with the appearance of a traveling band would interfere with the operation of the theatre. Gamble further advised Teagle that the Ray Eberle Band was scheduled to appear at the theatre for an engagement beginning November 20, 1947. He told Teagle that if this band was allowed to play, the theatre would contract for no further appearances of traveling bands until an agreement was reached with the Respondent. Teagle replied that this would not be acceptable. The Eberle Band did not fill its scheduled en-

gement at the Palace Theatre.<sup>3</sup>

Thereafter, early in 1949, Ronald W. Gamble sought Teagle's consent to the engagement of traveling bands by the Palace Theatre. However, Teagle's position, articulated in the 1947 conference, that a local orchestra must be employed if traveling bands are to appear at the Palace Theatre, remained unchanged. Later, in May 1949, representatives of the Respondent met with representatives of the charging party with the object of negotiating an agreement. The Respondent offered various alternative suggestions for the employment of a local orchestra in connection with the appearance of traveling bands at the Palace Theatre. It appears from these proposals that the Respondent was seeking an agreement which would guarantee employment of a local orchestra in some proportion to the number of engagements of traveling bands at the Palace Theatre. The charging party was unwilling to give any such guarantee, but offered to employ a local orchestra whenever it presented a show on its stage unaccompanied by a traveling band. The parties did not reach any agreement at this meeting.

On July 26, 1949, Gamble Enterprises, Inc., executed a contract for the appearance at the Palace Theatre on August 18, 1949, of "Roy Acuff and his Grand Ole Opry," a traveling band. Teagle was advised of this booking. Teagle also received a telephone call and telegram from the manager of the Acuff show inquiring if it would be satisfactory for the band to fill its engagement at the Palace Theatre. In each instance, Teagle replied that no agreement had been consummated between the Respondent and the theatre management.<sup>4</sup> The Roy Acuff show did not fill its engagement at the Palace Theatre.

<sup>3</sup> The foregoing antedates the filing of the charges in this case by more than 6 months and is recited only as background. *Florida Telephone Corporation*, 88 NLRB No. 251; *Axelsson Manufacturing Company*, 88 NLRB No. 155.

<sup>4</sup> The significance of Teagle's responses must be viewed in the light of Section 3 of article 18 of the Constitution and By-laws of the American Federation of Musicians, which provides:

(Continued on following page)

At a subsequent meeting between the parties, held in December 1949, a tentative agreement was reached whereunder the theatre would employ a local orchestra for one engagement to perform with a traveling vaudeville act and the theatre would be permitted to engage a traveling band within 60 days thereafter without being required to employ local musicians for the second engagement. However, this proposed agreement was rejected by the home office of Gamble Enterprises, Inc., and accordingly was never consummated.<sup>5</sup>

The Trial Examiner found, as we do also, that after enactment of the Taft-Hartley Act the Respondent was primarily interested in securing employment of its members by the theatre management. However, in spite of his further finding that all of the Respondent's proposals for the employment of its members appeared to contemplate actual performances on their part, the Trial Examiner, nevertheless, concluded that there was implicit in the Respondent's proposals the requirement that, whether acceptable to management or not, the theatre should employ and pay a local orchestra for at least half as many engagements as it contracted for with traveling bands even though the local orchestra might not actually give any performances. We find no evidence in the record to support this conclusion, nor does the Trial Examiner in his Intermediate Report refer to any testimony from which such conclusion may properly be drawn. The Trial Ex-

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*(Continued from preceding page)*

Traveling members appearing in acts with vaudeville units or presentation shows are not permitted to play for any other acts on the bill without the consent of the Local;

and section 4, which provides:

Traveling members cannot, without the consent of a Local, play any presentation performances in its jurisdiction unless a local house orchestra is also employed.

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<sup>5</sup> The above recital of facts is not intended to summarize all the evidence adduced at the hearing, but only that part of the evidence which relates to the single aspect of the case upon which we base our decision herein.



aminer, in support of his conclusion that the Respondent's real objective, although camouflaged in its expression, was to cause employment of and payments to a local orchestra by the theatre management whether or not it gave any performances, relies merely upon the persistence with which the Respondent insisted that the theatre management bargain on the employment of a local orchestra in connection with appearances of traveling bands on the stage of the Palace Theatre. However, we cannot agree that such persistence on the part of the Respondent supports the conclusion drawn by the Trial Examiner. Although, before enactment of the Taft-Hartley Act, the Respondent may have promoted a policy whereunder a local orchestra was paid whenever a traveling band appeared on the stage of the Palace Theatre whether or not the local musicians gave any actual performances, the record shows no affirmation of such policy after passage of the Taft-Hartley Act. On the contrary, the instant record shows that in seeking employment of a local orchestra, the Respondent insisted that such orchestra be permitted to play at times which would not conflict with the traveling bands' renditions. Thus, the record herein does not justify a finding that, during the period embraced by the charges herein, the Respondent was pursuing its old policy and was attempting to cause the charging party to make payments to local musicians for services which were not to be performed.

It may well be that the Respondent modified its earlier policy in order to avoid violating Section 8 (b) (6) of the Act. However, that is a result which Congress intended to effect. The object of Section 8 (b) (6), as well as other sections of the Act, was to cause labor organizations to abandon practices which although lawful before the 1947 amendment of the Act thereafter became unlawful, but was not intended to prevent labor organizations from substituting other lawful objectives in the place of those which the Act required them to abandon. Under both the Wagner Act and the Taft-Hartley Act it was and is perfectly lawful for a labor organization to seek employment for its

members.<sup>6</sup> Section 8 (b) (6) was not intended to outlaw such activity on the part of labor organizations. Section 8 (b) (6) was framed solely to restrict exactions by labor organizations for "services not performed or not to be performed." The record in this case contains no testimony indicating that the Respondent was seeking any payments for "services not performed or not to be performed."

In his Intermediate Report the Trial Examiner suggests that even if the Respondent's proposals contemplated actual performances on the part of the local orchestra, an attempt by the Respondent to cause an employer to accept services which he does not want, does not need, and is not willing to accept, would be a violation of Section 8 (b) (6). We do not subscribe to this proposition. The Trial Examiner derives his theory from a statement made by Senator Taft during a colloquy following Senator Taft's presentation of Section 8 (b) (6) of the Conference Bill to the Senate. In reply to a remark by Senator Pepper that the language of Section 8 (b) (6) was so broad that it did in fact cover payments for rest periods and call-in pay because these were payments for time when no actual work was done, Senator Taft said:

I am sorry to disagree with the Senator, but it seems to me that it is perfectly clear what is intended. It is intended to make it an unfair labor practice for a man to say, "You must have 10 musicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway." That is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept. (Emphasis supplied.)<sup>7</sup>

The foregoing remark by Senator Taft was made in the context of a debate upon whether the proposed legislation covered all instances where a labor organization

<sup>6</sup> Unless, of course, the conduct involved, as it does not in this case, falls within the prescriptions of Section 8 (b) (4) (D) of the amended Act.

<sup>7</sup> 93 Cong. Rec. 6603.

was seeking payments to employees for time when the employees might not be engaged in the performance of actual work. It does not seem that the remark was intended to be applied to situations where it is contemplated by the union that the employees shall perform work. On the contrary, Senator Taft's observation suggests quite clearly that Section 8 (b) (6) was intended to be limited to the case in which the object of the union is to secure compensation for persons who perform no work and that the Section does not proscribe activity aimed at securing work. This is substantiated by the fact that all other references to Section 8 (b) (6) during the congressional debate on the proposed Taft-Hartley Act speak only of situations where labor organizations seek payments to employees for doing no work whatsoever. For instance, Senator Taft, during his explanation of why the conference committee eliminated all but one of the "featherbedding" provisions contained in the original House Bill, stated:

However, we did accept one provision which makes it an unlawful-labor practice *for a union to accept money for people who do not work*. That seemed to be a fairly clear case, easy to determine, and we accepted that additional unfair labor practice on the part of unions, which was not in the Senate bill. (Emphasis supplied.)<sup>8</sup>

On another occasion, Senator Taft stated:

The use of the words "in the nature of an exaction" make it quite clear that what is prohibited is extortion by labor organizations or their agents *in lieu of providing services which an employer does not want*. (Emphasis supplied.)<sup>9</sup>

Finally, on the last day of debate in the Senate, just before the vote to override the President's veto, Senator Ball declared as to Section 8 (b) (6):

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<sup>8</sup> 93 Cong. Rec. 6598.

<sup>9</sup> 93 Cong. Rec. 7001-2.

There is not a word in that \* \* \* about "feather bedding." It says that it is an unfair practice *for a union to force an employer to pay for work which is not performed* \* \* \* it [applies] only to situations, for instance, where the Musicians' Federation forces an employer to hire one orchestra and then to pay for another stand-by orchestra, *which does no work at all.* (Emphasis supplied.)<sup>10</sup>

In our opinion, Section 8 (b) (6) was not intended to reach cases where a labor organization seeks actual employment for its members, even in situations where the employer does not want, does not need, and is not willing to accept such services. Whether it is desirable that such objective should be made the subject of an unfair labor practice is a matter for further congressional action, but we believe that such objective is not proscribed by the limited provisions of Section 8 (b) (6).<sup>11</sup>

Upon the entire record in the case, we find that the Respondent has not been guilty of unfair labor practices within the meaning of Section 8 (b) (6) of the Act. Accordingly, we shall dismiss the complaint herein.

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<sup>10</sup> 93 Cong. Rec. 7683.

<sup>11</sup> As a further reflection upon the limited scope of Section 8 (b) (6) is the fact that Senate Bill 249, offered by Senator Taft to the 81st Congress as an amendment to the National Labor Relations Act, omits Section 8 (b) (6) altogether. Senator Taft in his analysis of his proposed bill said, "The limited restrictions on featherbedding is eliminated. Section 8 (b) (6)."



## ORDER.

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that the complaint against the Respondent, American Federation of Musicians, Local No. 24, of Akron, Ohio, be, and it hereby is, dismissed.

Signed at Washington, D. C., Jan. 24, 1951.

ABE MURDOCK,

Member,

PAUL L. STYLES,

Member,

(Seal)

National Labor Relations Board.

JAMES J. REYNOLDS, JR., *Member*, dissenting:

I do not agree with the opinion of the majority that the Respondent's conduct here in attempting to cause Gamble Enterprises, Inc., to hire a local orchestra was not for an objective proscribed by Section 8 (b) (6).

It is clear, in this case, that the Respondent's [compulsive] demands upon Gamble to hire its members—the local orchestra—were made with the knowledge that the music such local orchestra sought to provide for Gamble constituted "services" that Gamble did not need, did not want, and was not even willing to accept.<sup>12</sup> The question thus presented is whether or not such demands are permitted by Section 8 (b) (6), which makes it an unfair

<sup>12</sup> The record plainly establishes that Gamble Enterprises, Inc., had no available jobs which a local orchestra could fill, that its sole need for musicians was for such as were associated with a "name-band," and that the Respondent was at all times aware of these facts. As found by the Trial Examiner, the tentative agreement negotiated in December 1949 is not an indication that the Complainant was able to make use of the services of a local orchestra for a separate engagement whenever it engaged a "name-band." In its proper perspective, such tentative agreement represented a final effort on the part of the local theatre management to meet, in part, the Respondent's demands short of complete capitulation.

labor practice for a labor organization to exact or to attempt to exact from an employer payment for "services not performed or not to be performed."

As is apparent, the language of the section, on its face, is not so unambiguous as to relieve the Board of the duty to exercise its function of interpretation. Resort to the legislative history of this provision plainly discloses, on the one hand, that it was not intended to embrace every union demand for payment to its members during periods of time when they performed no actual "work" or "services," nor to outlaw all types of "featherbedding" practices.<sup>13</sup> In the *American Newspaper Publishers Association* case,<sup>14</sup> where the Board first had occasion to pass upon the scope of Section 8 (b) (6), the Board recognized the restrictive applicability of the Section, and held that the demands of a union on behalf of employees who were regularly performing necessary work tasks assigned by their employer were outside the reach of Section 8 (b) (6), even though such demands specifically required the employer to pay such employees for useless and nonproductive "work." On the other hand, although the legislative history does not clearly define all situations to which the statutory provision in question would be applicable, it significantly singles out as a type of proscribed exaction the very union practice in issue here. Thus, Senator Taft, in answering the expressions of opposition to the enactment of Section 8 (b) (6) as were predicated on fears that the provision would serve to undermine beneficial incidents to employment such as vacations, rest periods, etc., stated as follows:

I am sorry to disagree with the Senator, but it seems to me that it is perfectly clear what is intended.

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<sup>13</sup> For example, as Senator Taft's statement indicates, demands by unions on behalf of employees for paid rest periods, vacations, and call-in pay, were specifically exempted from the reach of this statutory provision because such activities were deemed to be "incident to the employment itself." See 93 Cong. Rec. 7001-7002.

<sup>14</sup> 86 NLRB 951.

It is intended to make it an unfair labor practice for a man to say, "You must have 10 musicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway." That is the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept.<sup>15</sup>

\* \* \* \* \*

Of course this section does not affect such industrial practices, as such activities are done at an employer's request and for *valuable consideration incident to the employment itself*. The use of the words "in the nature of an exaction" make it quite clear that *what is prohibited is extortion by labor organizations or their agents in lieu of providing services which an employer does not want*. (Emphasis supplied.)<sup>16</sup>

Notwithstanding such compelling legislative history, the majority maintains that statements by Senator Taft<sup>17</sup> and by Senator Ball,<sup>18</sup> indicate that the proscription of the statute is inapplicable to the situation present in this case. The statements to which the majority have reference generally describe the area of the statutory proscription in terms of acceptance of "money for people who do not work" and of forcing "an employer to pay for work which

<sup>15</sup> Senator Taft at 93 Cong. Rec. 6603.

<sup>16</sup> Senator Taft at 93 Cong. Rec. 7001-7002.

<sup>17</sup> Senator Taft, at 93 Cong. Rec. 6598, stated: "However, we did accept one provision which makes it an unlawful-labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine, and we accepted that additional unfair labor practice on the part of unions, which was not in the Senate bill." (Emphasis supplied.)

<sup>18</sup> Senator Ball, at 93 Cong. Rec. 7683, stated: "There is not a word in that \* \* \* about 'feather bedding.' It says that it is an unfair practice for a union to force an employer to pay for work which is not performed \* \* \* it [applies] only to situations, for instance, where the Musicians' Federation forces an employer to hire one orchestra and then to pay for another stand-by orchestra, which does no work at all." (Emphasis supplied.)

is not performed." The burden of the majority's argument is that because the Respondent was insisting that the local orchestra be permitted to provide music, the Respondent was not requiring payments from Gamble, contrary to the statute, for "people who do not work," or for "work which is not performed."

Acceptance of this argument requires a subsidiary determination that, in speaking of "work" performance, the proponents of the Act were equating union demands upon employers involving the hire of persons to perform existing work tasks to demands involving the hire of persons to perform work tasks which do not already exist as part of the employer's operations and which are neither needed nor wanted. I am not prepared, however, to join in such determination, for I believe it cannot be reconciled with the legislative history of Section 8 (b) (6) as a whole and, more particularly, with the specific examples referred to in the congressional debates as practical guides for determining the application of the statute. Thus, in framing Section 8 (b) (6), Congress specifically envisaged that the section would serve as the means of suppressing certain "standby"<sup>19</sup> hiring practices. I am of the opinion that congressional concern over these practices did not turn upon the willingness of the "standby" to make his unneeded services available to the prospective employer because no distinction was made between the "standby" who intended to do no work and the "standby" who actually sought to perform unneeded work. The expressed concern of the legislature was, rather, with the fact that "standby" hiring practices represented a device for securing payments to persons who did not already enjoy employee status and whose "employment," in the circumstances, would yield no corresponding benefit to the employer. There is, moreover, a further compelling reason why I cannot accept the majority's construction of Section 8 (b) (6). Under their construction of the section, unions can avoid liability in all circumstances by the simple ex-

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<sup>19</sup> See footnote 18, *supra*.



pedient of insisting upon the performance of nonexistent and unwanted work tasks. In consequence, the statutory provision becomes a nullity for all practical purposes.

I believe, for the foregoing reasons, that Congress intended the statute to be applicable, at least under some circumstances, to union hiring demands contemplating payments for the performance of work tasks which do not already exist as part of the employer's work structure and which the employer neither "needs nor wants."<sup>20</sup> Accordingly, I would hold that the situation presented in this case may be reached under Section 8 (b) (6) of the Act.

This view compels me to go one step further than the majority and pass upon the Trial Examiner's finding that the Respondent did not use coercive economic pressures in aid of its demands. For reasons appearing below I do not agree with the Trial Examiner and would find contrawise.

The long course of dealings between the Respondent and Gamble on the subject of the hiring of a local orchestra<sup>21</sup> were marked, on Gamble's part, by adamant resistance to the demands; and on the Respondent's part, by its effective advertisement to Gamble that such resistance would result in the Respondent's invocation of the powers granted to it, under the intraunion scheme of regulations governing all members of the American Federation of Musicians, to prevent the "name bands" booked by Gamble from fulfilling their contracts. The Respondent's clearly coercive threats of reprisal in its dealings

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<sup>20</sup> See Senator Taft's statement at 93 Cong. Rec. 6603.

<sup>21</sup> During all times material herein Gamble Enterprises, Inc., employed no musicians at the Palace Theatre. The Respondent's dealings with Gamble, therefore, were not predicated upon the existence of any status as bargaining representative entitled to affirmative protection and recognition under the Act. There is a marked difference between the pressures which a union possessing such status may be entitled to use and those which a union not the representative of any employees of the employer, such as the Respondent herein, may use. The Respondent's dealings with Gamble can in no sense be regarded as statutory "collective bargaining."

preceding the enactment of the amended Act were not withdrawn during any of the times material here.<sup>22</sup> Indeed, the continuing existence of the threats and their effective use as a source of pressure upon Gamble were plainly demonstrated by the "Roy Acuff" incident detailed more fully in the Intermediate Report.<sup>23</sup>

It is true, as the Trial Examiner finds, that Gamble's contract with Roy Acuff incorporated by reference the rules and regulations of the American Federation of Musicians with which the Respondent was affiliated. The sole importance of that fact is that Gamble was thus made specifically aware that the Respondent still possessed the power to render at naught the economic benefits of the agreement.<sup>24</sup> For, whatever the legal effect of Gamble's assent to this provision in the contract may have upon Gamble's relations with Acuff, such provision does not inure to the benefit of the Respondent, nor excuse the Respondent from liability for any matters complained of herein, because the Respondent was not a party to the contract nor a beneficiary thereof. The aforesaid contract between Gamble and Acuff did not express Gamble's waiver of its right to refuse to employ a local orchestra,<sup>25</sup> nor did it grant to the Respondent a license to use coercive tactics to prevent Gamble from employing the services of a traveling band without simultaneously employing a local orchestra. In my opinion, this provision of the contract between Gamble and Acuff, at most, excuses Acuff from

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<sup>22</sup> Compare *American Newspaper Publishers Association*, 36 NLRB 951, 952-954.

<sup>23</sup> There can be little question on the record that Roy Acuff's failure to fulfill its performance contract with Gamble was attributable to the Respondent's refusal to grant its consent to Acuff's appearance.

<sup>24</sup> See footnote 4, *supra*.

<sup>25</sup> Compare *Tide Water Associated Oil Company*, 85 NLRB 1096, 1098, where the Board noted that it will not infer a waiver-by-contract of legal rights otherwise entitled to protection under the Act in the absence of "clear and unmistakable" language in the contract expressing such intent.

liability to Gamble' in the event that the Respondent invokes its power under the union rules to prevent Acuff from fulfilling its scheduled engagement at the Palace Theatre.

Contrary to the Trial Examiner's view, I find nothing in the Board's decision in the *Conway's Express* case<sup>26</sup> which requires a contrary conclusion. The *Conway's Express* case involved the legal effect of a contract between parties to a collective bargaining relationship whereunder the employer had voluntarily agreed to restrict certain of its legal privileges. The conduct of the contracting union which was the subject of the complaint therein involved pressure by the union upon the employer to honor its specific contractual commitments. The facts of the instant case plainly are not analogous to those in the *Conway's Express* case.

Under all the circumstances, I would find that the Respondent, by applying coercive pressures upon Gamble in order to obtain the latter's agreement to employ and pay a local orchestra whenever Gamble contracted for the services of a traveling band, engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (6) of the Act.

Signed at Washington, D. C. Jan. 24, 1951.

JAMES J. REYNOLDS, JR.,

Member,

National Labor Relations Board.

<sup>26</sup> *Henry Rabouin, d/b/a Conway's Express*, 87 NLRB No. 130.

## PETITION TO REVIEW ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

(Filed in Court of Appeals May 17, 1951.)

*To the Honorable, the Judges of the United  
States Court of Appeals for the Sixth  
Circuit:*

This is a petition to review an order of the National Labor Relations Board (hereinafter called the Board) dismissing a complaint alleging unfair labor practices by the American Federation of Musicians, Local No. 24.

Gamble Enterprises, Inc., pursuant to the National Labor Relations Act, as amended (Title 29, Section 151 *et seq.* U. S. C., 61 Stat. 136) (hereinafter called the Act), respectfully petitions this Honorable Court for a review of a certain final order entered on or about January 24, 1951 by the Board, dismissing the complaint in a proceeding against American Federation of Musicians, Local No. 24 of Akron, Ohio (hereinafter called the Union), appearing and designated upon the records of the Board as "In the Matter of American Federation of Musicians, Local No. 24 of Akron, Ohio, and Gamble Enterprises, Inc., Case No. 8-CB-23."

### 1. *Nature of the Proceedings.*

On or about November 16, 1949 your Petitioner ~~filed~~ filed with the National Labor Relations Board, Eighth Region, an amended charge alleging that the Union in the above mentioned matter had engaged in and was engaging in unfair labor practices affecting commerce in violation of the National Labor Relations Act, as follows:

"Since on or about October 1947 and continuously thereafter, the American Federation of Musicians, Local #24, AFL, and its agents, have demanded and still demand that Gamble Enterprises, Inc. in its operation of the Palace Theater in Akron, Ohio, pay for a local orchestra whenever a traveling band or



show appears on the stage of the Palace Theater, although Gamble Enterprises, Inc., has no need for, does not want, and cannot use a pit orchestra when a traveling band or show appears on the stage of the Palace Theater.

"The demand of the Union and its agents for payment for a pit orchestra under such circumstances constitutes an attempt to cause Gamble Enterprises, Inc. to pay or deliver money in the nature of an exaction for services which are not performed or not to be performed."

Thereafter the General Counsel of the Board, by the Acting Director of the Eighth Region, pursuant to authority vested in him by Title 29, Section 153(d) U. S. C., on or about the 3rd day of January, 1950 issued, filed and served its complaint against the Union, charging the Union with having engaged in and engaging in unfair labor practices within the meaning of Section 8, subsection (b) (6) of the National Labor Relations Act (Title 29, Section 158 (b) (6) U. S. C.) as alleged in the amended charge of the Petitioner. Hearing on said complaint was had before a Trial Examiner of the National Labor Relations Board on March 14, 15 and 16, 1950, and said Trial Examiner on May 24, 1950 issued his Intermediate Report finding that the Union had not engaged in and was not engaging in any unfair labor practices within the meaning of the Act by reason of the Trial Examiner's finding that your Petitioner had agreed to the practices complained of in your Petitioner's charge and the Board's complaint, and said Trial Examiner recommended that the complaint against the Union be dismissed in its entirety. After transfer of the matter to the Board, said Board on January 24, 1951 rendered its decision and issued its final order dismissing the complaint against the Union, but upon different grounds than did the Trial Examiner.

## *2. Basis of Jurisdiction.*

Petitioner is and at all times herein mentioned has been engaged in maintaining and operating a chain of theaters in various states of the United States, including the Palace Theater in Akron, Ohio. Further, Petitioner in the normal course and conduct of its business, including the operation of said theater, causes and has continually caused materials and equipment, consisting principally of motion pictures, films, advertising supplies and stage scenery, all in substantial amounts and numbers, to be purchased, transported and delivered in interstate commerce from points in various states in the United States to and through other states in the United States. Petitioner is an aggrieved party within the meaning of Title 29, Section 160(f), U. S. C. By reason of the foregoing facts, this Court has jurisdiction of this petition under Title 29, Sections 160(e) and 160(f), U. S. C.

## *3. Basis of Venue.*

Petitioner is and at all times herein mentioned was a corporation duly organized under the laws of the State of Washington and owns the Palace Theater (hereinafter called the Theater) located at Akron, Ohio, the same being within this Judicial Circuit, where all of the alleged unfair labor practices complained of occurred.

## *4. Points Upon Which Petitioner Relies.*

Your Petitioner intends to rely upon the following points:

(1) The Board erred in denying Petitioner's exceptions to the Intermediate Report of the Trial Examiner.

(2) The Board erred in its decision and order finding that the conduct pursued by the Union during the period here involved did not constitute an unfair labor practice within the meaning of Section 8(b)(6) of the Act (Title 29, Section 158(b)(6) U. S. C.) and in dismissing the complaint.

(3) The Board erred in its decision and order finding that the Union's objective in its negotiations with your Petitioner was to obtain bona fide employment for the local orchestra in return for which services would be rendered.

(4) The Board erred in its decision and order finding that the acts and conduct of the Union here constituted an effort to obtain bona fide employment for the local orchestra and was not violative of Section 8(b)(6) of the Act (Title 29, Section 158 (b)(6) U. S. C.) even if the employer did not want, did not need and was not willing to accept such services.

(5) The decision and order of the Board dismissing the complaint is not supported by substantial evidence on the record considered as a whole.

#### *5. The Relief Prayed.*

WHEREFORE Gamble Enterprises, Inc. petitions this honorable Court for a review of the aforementioned order entered by the Board in the aforementioned proceedings and your Petitioner respectfully prays:

(1) that the Board be required to certify and deliver to this honorable Court, or to Petitioner, a transcript of the entire record in the aforementioned proceedings before the Board, including the pleadings and testimony upon which the order complained of was entered, the Intermediate Report and Recommended Order of the Trial Examiner, the exceptions filed by the parties to said Intermediate Report, and the decision and order of the Board.

(2) that the aforesaid order of the Board be set aside and that the matter be remanded to the Board with instructions to find on the record that the conduct of the Union complained of constitutes a violation of Section 8(b)(6) of the National Labor Relations Act, as amended (Title 29, Section 158(b)(6) U. S. C.), and to order the cessation and termination of such unfair labor practices

and to give such further relief as will effectuate the policies of the Act.

Respectfully submitted,

GAMBLE ENTERPRISES, INC., *Petitioner*,  
By FRANK C. HEATH,

1759 Union Commerce Building,  
Cleveland 14, Ohio,

EDWARD E. RIGNEY,

1759 Union Commerce Building,  
Cleveland 14, Ohio,

*Attorneys for Petitioner.*

Dated: May 16, 1951.

(Verification omitted.)

**ANSWER OF NATIONAL LABOR RELATIONS BOARD  
TO PETITION FOR REVIEW OF AND TO SET  
ASIDE ITS ORDER.**

(Filed in Court of Appeals June 18, 1951.)

*To the Honorable, the Judges of the United States  
Court of Appeals for the Sixth Circuit:*

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, Sec. 151 *et seq.*), herein called the Act, files this answer to the petition for review of its order and decision, issued in the proceeding designated on the records of the Board as Case No. 8-CB-23, entitled: "In the Matter of American Federation of Musicians, Local No. 24, of Akron, Ohio and Gamble Enterprises, Inc."

1. Answering the allegations contained in paragraphs 1, 2, and 3 of the Petition for Review, the Board prays



reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all proceedings had in this matter.

2. The Board denies each and every allegation of error contained in paragraph 4 of the Petition for Review, and avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

3. Further answering, the Board avers that, with respect to the request for relief contained in paragraph 5 (1) of the Petition for Review, a transcript of the entire record in this proceeding has been certified and is herewith filed with the Court, pursuant to Section 10 (f) of the Act.

WHEREFORE, the Board respectfully requests this Court to deny the Petitioner's prayer for relief.

NATIONAL LABOR RELATIONS BOARD,

By A. NORMAN SOMERS,

Assistant General Counsel.

Dated at Washington, D. C.

This 15th day of June 1951. -

### DESIGNATION OF RECORD.

(Filed in Court of Appeals July 14, 1951.)

*To the Honorable, the Judges of the United States  
Court of Appeals for the Sixth Circuit,  
Cincinnati 2, Ohio:*

Comes now Gamble Enterprises, Inc., petitioner herein, by its attorneys, Frank C. Heath and Edward E. Rigney, and pursuant to Rule 15 (5) of this Court, files this designation of portions of the transcript of the record herein to be contained in the printed record.

1. Petition for Review of Order of the National Labor Relations Board and Answer thereto.

2. The entire stenographic transcript of the hearing before the Trial Examiner on March 14, 15 and 16, 1950.

3. General Counsel's Exhibits 1-A to 1-I, inclusive, 2 to 18, inclusive, and 20 to 23, inclusive.

4. Intermediate Report and Recommended Order of Trial Examiner, William E. Spencer, dated May 24, 1950.

5. Exceptions of counsel for the General Counsel of National Labor Relations Board to Intermediate Report and Recommended Order.

6. Exceptions of complainant to the Intermediate Report and Recommended Order.

7. National Labor Relations Board's Decision and Order dated January 24, 1951, including dissent by Member James J. Reynolds, Jr.

FRANK C. HEATH,

1759 Union Commerce Building,  
Cleveland 14, Ohio,

EDWARD E. RIGNEY,

1759 Union Commerce Building,  
Cleveland 14, Ohio,

*Attorneys for Petitioner.*

Dated at Cleveland, Ohio, this 13th day of July, 1951.

**STIPULATION RE EXHIBITS.**

(Filed in Court of Appeals September 26, 1951.)

It is hereby stipulated and agreed by and between counsel for the respective parties herein that the printing of the following described exhibits in the record on appeal shall be dispensed with and in lieu thereof such exhibits will be available for use on the argument of this cause:

1. General Counsel's Exhibit No. 3—Constitution, By-Laws and Policy of American Federation of Musicians of the United States and Canada, 1948.

2. General Counsel's Exhibit No. 4—Constitution, By-Laws, Wage Scale and Directory, Local No. 24, American Federation of Musicians.

3. General Counsel's Exhibit No. 23—Constitution, By-Laws and Policy of the American Federation of Musicians of the United States and Canada, 1949.

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EDWARD E. RIGNEY,

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*Attorneys for Petitioner.*

JONES, DAY, COCKLEY & REAVIS,

Cleveland 14, Ohio,

*Of Counsel.*

A. NORMAN SOMERS,

Assistant General Counsel, National  
Labor Relations Board,

*Attorney for Respondent.*

Dated September 21, 1951.

Approved:

/s/ XEN HICKS,

Chief Judge.

(Seal)

PROCEEDINGS IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**Cause Argued and Submitted**

(April 1, 1952—Before: Simons, Allen and McAllister, JJ.)

This cause is argued by Frank C. Heath for Gamble Enterprises, Inc., by Henry Kaiser for American Federation of Musicians, Inc., and by Bernard Dunau for National Labor Relations Board and is submitted to the court.

**Judgment**

(Filed: May 9, 1952)

On petition to set aside an order of Dismissal by The National Labor Relations Board,

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the order of dismissal is set aside and the cause remanded to the National Labor Relations Board for further proceedings not inconsistent herewith.

Reversed.

**Opinion**

(Filed: May 9, 1952)

No. 11405

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

GAMBLE ENTERPRISES INC., *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

PETITION to Set Aside an Order of Dismissal by The National Labor Relations Board.

Decided May 9, 1952.

Before SIMONS, Chief Judge; ALLEN and McALLISTER, Circuit Judges.

SIMONS, Chief Judge. The appeal requires interpretation and applicability of § 8(b)(6) of the Labor Management Relation Act



of 1947 (61 Stat. 140; 29 U. S. C. § 158(b)(6), the Taft-Hartley Act). The petitioner, a corporation operating a chain of theatres in several states, including the Palace Theatre at Akron, Ohio, filed a charge of unfair labor practices against Local No. 24 of the American Federation of Musicians. The general counsel of the Board issued a complaint which the Board dismissed, one member dissenting. The petitioner seeks reversal of the Board's order. § 8(b)(6) provides:

"It shall be an unfair labor practice for a labor organization, or its agents, . . . to cause, or attempt to cause, an employer to pay or deliver, or agree to pay or deliver, any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

The facts are not in dispute. Since the decline of vaudeville the policy of the Palace Theatre has been to occasionally present traveling bands of national reputation called "name bands" along with motion pictures. For many years prior to 1947, it paid for a stand-by orchestra composed of nine local musicians whenever a name band was hired to play an engagement. When the Taft-Hartley Act was passed, on June 23, 1947, the Palace refused any longer to pay for a stand-by orchestra and notified the union of its refusal. No objection was made at the time to this policy and no demands were made by the union for employment. Between June 2, 1947 and November 12 of that year, the Palace employed seven name bands without being required to pay for a stand-by orchestra.

In October of 1947, the union demanded that the petitioner hire a local orchestra every time the theatre employed a name band to play overtures, intermissions, and "chasers." Its demand was refused on the ground that the services of the orchestra were not needed, had no drawing power, and interfered with the operation of the theatre. At the time of the union demand the theatre had scheduled a performance by a traveling band for November 20. This band was not permitted to fill its engagement because of § 4 of Art. 18 of the constitution and by-laws of the American Federation of Musicians which prohibits a traveling member of the Federation from performing without the consent of the local, "unless the local house orchestra is also employed." Negotiations between the theatre and the union falling short of agreement need not be detailed. On May 16, 1949, the petitioner filed its unfair labor practice charge, and, on July 26, contracted for the appearance of a traveling orchestra to perform on August 18th, but the orchestra, upon being informed by the union that there was no agreement, failed to fill its engagement. Subsequent negotiations again yielded no agreement. On January 3, 1950, the Board issued

its complaint; a hearing was held at the close of which the trial examiner, though finding that the union's act fell within § 8(b)(6), recommended dismissal on the ground that the petitioner's contract with the orchestra being expressly subject to the rules and regulations of the union, it and not the acts of the union brought about failure of performance.

The Board affirmed the trial examiner's ruling, but upon the ground that the union's act did not fall within the condemnation of the section because the local orchestra insisted on being permitted to play and, therefore, did nothing more than seek employment, which was outside the coverage of the section.

The controverted section classifies as unfair, labor practices which cause or attempt to cause an employer to pay or deliver money, or things of value, "in the nature of an exaction." The examiner reasoned that the employment of a local orchestra in the pit on occasions when a name band was performing from the stage, which was undesirable from the viewpoint of the theatre management, added nothing of drawing power to its attractions and constituted positive interference with the stage attraction, was not a real service because it afforded no actual consideration for the payment of money. Such proposal, if accompanied by an attempt to cause its effectuation, is in the nature of an exaction from the employer. So, also, was an alternate proposal that the local orchestra be employed for 50% of the total number of engagements of traveling bands, when coupled with the coercive element residing in the fact that lacking consent of the Local, the theatre was unable to secure the services of traveling bands. The Labor Board found the evidence insufficient to sustain these conclusions, or to justify a finding that the union was attempting to cause the theatre to make payments to local musicians for services which were not to be performed. It held it to be perfectly lawful for a labor organization to seek employment for its members, that § 8(b)(6) was not intended to outlaw such activity, and was framed solely to restrict exactions by labor organizations for services "not performed or not to be performed."

The Board rejected the only reasonable inference to be drawn from undisputed facts. The entire history of the long maintained theatre policy supports the rejected inference. Prior to the enactment of the Taft-Hartley Act, it paid for the time of the union but declined to accept its services. Thereafter, it repeatedly engaged traveling bands without employing the local union. When the demand was made that it do so, the theatre persisted in its policy that it had no need for such services, did not desire them, and that they would be a detriment rather than an advantage to it. The right of an enterprise to frame its own business or entertainment policy when no violation of law may be perceived is indisputable.

The section uses the phrase "for services not performed or not to be performed." The union knew the settled policy of the theatre. It acquiesced in it for nearly six months after the effective date of the Taft-Hartley Act. To force the theatre to pay for services not needed, and of detriment to it was clearly an exaction.

By the Board's order, the provisions of § 8(b)(6) may be completely nullified by the mere assertion of the union that it desires to perform. The Board reasoned that this was precisely the object of the section and speculated that the union had modified its earlier policy in order to avoid its violation. We are unable, however, to ascribe to Congress a purpose to condemn certain practices in labor relations and at the same time to use a form of expression that permits escape from its condemnation.

While much subtle interpretation has been applied to the legislative history of the enactment and to the colloquies between Senator Taft and other members of the Senate to sustain the non-applicability of the section to presently challenged practices, it would extend this opinion to undue length to analyze each of the excerpts from the Senate debate presented to us. It is sufficient to say that in the main they demonstrate Senator Taft's effort to convince his colleagues that the section does not reach conventional stand-by practices normally incident to services required by an employer from his employees in the usual course of his business and of benefit to him such as rest periods, lunch periods, relief duty in case of emergency or need, inactive periods during time of machinery repair, and other non-work presence of regular employees upon the employer's premises.

The dominant purpose of § 8(b)(6), however, is illuminated by Senator Taft in 93 Cong. Rec. 6446 where he said of it:

" . . . To make it an unfair labor practice for a man to say you must have ten musicians and if you insist that there is room for only six you must pay the other four anyway, that is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept."

The analogy of the example to the presently charged labor practice falls barely short of perfection, and reaches it if we substitute "need" for "room."

No great social or economic purpose in the field of labor relations invites a strained construction of the challenged section. By its application to a situation clearly within its declared purpose, the field of activity for a small local orchestra may be somewhat curtailed but at the same time the market for the services of much larger musical organizations is greatly enhanced.

*Nierotko v. Social Security Board*, 149 ~~U.~~ (2d) 273, 276, (C. A. 6), affirmed *Social Security Board v. Nierotko*, 327 U. S. 358, is not dispositive of the present controversy. The *Nierotko* case dealt with the back pay orders of the National Labor Relations Board in determining that such pay constituted "wages" under the Social Security Act. The employees there concerned were the regular employees of the Ford Motor Company, prevented from the pursuit of legally protected organizing and bargaining efforts by the unlawful acts of their employer. The case involved interpretation of the Social Security Act, the preservation of the benefits provided by that Act, and incidental to regular employment. Here, the members of the orchestra were not in the employ of the theatre and their services were sought to be imposed upon the employer by practices in the nature of an exaction.

The order of dismissal is set aside and the cause remanded to the National Labor Relations Board for further proceedings not inconsistent herewith.

Reversed.

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UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

I, Carl W. Reuss, Clerk of the United States Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of Gamble Enterprises, Inc. vs. National Labor Relations Board No. 11,405, as the same remains upon the files and records of said United States Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 18th day of June, A.D. 1952.

CARL W. REUSS

*Clerk of the United States Court of Appeals  
for the Sixth Circuit.*

By NOYCE ROBERTSON

*Chief Deputy*



## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

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No. 238

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

GAMBLE ENTERPRISES, INC.

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ORDER ALLOWING CERTIORARI FILED OCTOBER 13, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is assigned for argument immediately following No. 53. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

NO. 238

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**In the Supreme Court of the United States**

OCTOBER TERM, 1952

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NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

GAMBLE ENTERPRISES, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
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# In the Supreme Court of the United States

OCTOBER TERM, 1952

No. \_\_\_\_\_

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

GAMBLE ENTERPRISES, INC.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Sixth Circuit entered on May 9, 1952 (R. 395), which set aside an order of the Board dismissing a complaint against Local No. 24, American Federation of Musicians.

### OPINIONS BELOW

The opinion of the court below (R. 395) is reported at 196 F. 2d 61. The findings of fact, con-



clusions of law, and order of the Board (R. 370-385, 343-367) are reported at 92 NLRB 1528.

### **JURISDICTION**

The judgment of the court below was entered on May 9, 1952 (R. 395). The jurisdiction of this Court is invoked under 28 U. S. C: 1254 and Section 10 (e) of the National Labor Relations Act, as amended.

### **QUESTION PRESENTED**

Whether it is an unfair labor practice under Section 8 (b) (6) of the National Labor Relations Act for a labor organization to attempt to secure the employment of its members for the performance of actual work, and to have the employer agree to pay for the work done, where it is the employer's position that he does not want or need the work.

### **STATUTE INVOLVED**

The pertinent provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), is set forth *infra*, p. 10.

### **STATEMENT**

After the usual proceedings under Section 10 of the National Labor Relations Act, the National Labor Relations Board on January 24, 1951, issued an order (R. 379) dismissing an unfair labor practice complaint (R. 6-8) which, based on charges filed by Gamble Enterprises, Inc. (R. 1-3, 4-5), alleged that Local No. 24, American Federation of

Musicians, had engaged in conduct which violated Section 8 (b) (6) of the Act. Section 8 (b) (6) makes it an unfair labor practice for a labor organization to attempt to cause an employer to pay or agree to pay money or other thing of value, "in the nature of an exaction, for services which are not performed or not to be performed." The facts pertinent to the complaint may be summarized as follows:

#### **I. The facts**

Before the decline of vaudeville in 1940, the Palace Theatre in Akron, Ohio, one of a chain of theatres owned by the Company, regularly employed a local orchestra of nine musicians, all members of the Union, to provide music for stage acts performing at the Palace (R. 61, 75, 79, 207; 208-210). Since 1940, the showing of vaudeville has been abandoned, and the Palace Theatre has been used primarily for the exhibition of motion pictures, occasionally supplemented by the appearance of traveling bands of national reputation for limited engagements (R. 346, 371-372; 101-103). Between 1940 and July 1947, whenever a traveling band appeared at the theatre, the members of the local orchestra, no longer employed on a regular basis, were paid a sum equal to the minimum union wage for a similar engagement, although they played no music on these occasions (R. 347, 372; 64-72, 79-80, 84-85, 213-214, 234). The last such payment was made to the local orchestra on July

2, 1947, over a month before August 22, 1947, the effective date of the amendments to the Act, which included Section 8 (b) (6) (R. 347, 372; 104).

Between July 2 and November 12, 1947, seven performances of name bands were presented on the stage of the Palace Theatre, and during this time the Union voiced no objection to the performances, nor did it make any demands for either the employment or the payment of local musicians (R. 347, 372; 104-105). Late in October 1947, the Union requested the Palace management to employ a "pit" orchestra composed of local musicians; proposed that the local orchestra play intermissions, overtures, and "chasers"<sup>1</sup> whenever a traveling band performed on stage; and stated that, unless an agreement was reached concerning the employment of local musicians, traveling bands would not be authorized to appear at the Palace<sup>2</sup> (R. 347-348, 372; 105-106). The management refused the services of a local orchestra, stating that the theatre had no need for local musicians; that their services had not been used, although paid for, in the past;

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<sup>1</sup> Under the arrangement suggested, the local orchestra would provide "a small musical prologue before the actual show went on, and some music after the show while people were filing in and out of their seats" (R. 110).

<sup>2</sup> Article 18, Section 4, of the constitution and bylaws of the American Federation of Musicians, provides: "Traveling members cannot, without the consent of a Local, play any presentation performances in its jurisdiction unless a local house orchestra is also employed" (G. C. Exh. Nos. 3 and 23, R. 35).

and that their performance in conjunction with the appearance of a traveling band would interfere with the operation of the theatre (R. 348, 372; 105-106).

Negotiations between the Company and the Union were not resumed until late in 1948 or early in 1949 (R. 349, 373; 108, 110). On May 8, 1949, at a meeting with the management, the Union sought to obtain a guarantee that a local orchestra would be employed in some proportion to the number of engagements given traveling bands (R. 351, 373; 44-45, 110, 148-149, 159-161, 188-189, 216-218). To this end, the following alternative means were suggested by the Union: (1) that a local orchestra be stationed in the theatre pit to play an overture before, and a "shirttail" or "chaser" after, the performance of a name band, in addition to providing music during intermissions (R. 349-350, 373; 148, 216, 219); or (2) that a local orchestra, instead of the name band, be used in the pit to provide music for those vaudeville acts which were not an integral part of a name band ensemble (R. 350, 373; 148, 186-187, 218);<sup>3</sup> or (3) that a local orchestra be given separate engagements to perform on stage with vaudeville acts booked into the

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<sup>3</sup> A distinction exists, in the entertainment field, between a "unit show," which consists of a traveling band having vaudeville acts as a regular part of its performances, and a traveling band (usually a dance band), which merely engages vaudeville acts on a temporary basis for one or more theatre engagements (R. 187, 218). The Union's proposal applied to the latter situation.



theatre by the management (R. 350, 373; 113, 219); or (4) that a local orchestra be employed and used on half of the total number of stage shows presented each year (R. 350, 373; 146-147, 188-189, 219). Every proposal made by the Union at this meeting, as well as during the entire course of negotiations, contemplated the performance of actual work by the local orchestra, and no suggestion was ever made that local musicians be paid for not working, as the theatre manager admitted in the course of the proceedings (R. 148):

Q. Now, on all of these occasions, in which [Union] members were to appear or play, [the Union representative's] suggestion was that his members actually work on those occasions, isn't that true?

A. I would imply that.

\* \* \* \* \*

Q. But he said that he wanted his people to work on those occasions?

A. That is right.

Q. He never asked you to pay them for not working, for not being there?

A. That is right.

As the theatre manager further admitted (R. 155), the concurrent employment of a traveling band and a local orchestra would not have posed any problem concerning the adequacy of the theatre's physical facilities. Traveling bands cus-

tomarily perform on the stage of a theatre (R. 347, 350; 105, 162), and the Union had proposed that the local orchestra perform in the Palace pit during concurrent engagements with such organizations (*supra*, pp. 4-5). Nevertheless, the Union proposals were rejected by the Company on the ground that the services of local musicians were unnecessary, as well as economically infeasible (R. 350; 155-156, 160). The Company offered to employ a local orchestra whenever a show was presented at the Palace which was not accompanied by a traveling band, but it refused to give any assurances concerning the number of such presentations (R. 350-351, 373; 148-149, 217-218). No agreement was reached by the parties at the May 8 meeting (R. 351, 373; 44-45, 155, 160-161, 220-221).

At an ensuing meeting between the Company and the Union in December 1949, the management announced that an RKO vaudeville unit, then appearing in Youngstown, Ohio, was available for local bookings and required the services of an orchestra (R. 355-356, 374; 118-119). The Company offered to book this unit for an appearance at the Palace and to engage the local orchestra to accompany its performance. The Company conditioned this offer on the Union's assent to the subsequent appearance of a traveling band for a separate engagement at which the local orchestra would not perform (R. 356, 374; 118-119, 133-135). The proposal was entirely satisfactory to the Union, which offered to enter into a contract embodying

these terms (R. 356, 374; 120, 194, 241-243). The proposed arrangement never went into effect, however, for it was vetoed by the Company's New York office (R. 356, 374; 120, 194-195), which determines the policies governing the operation of the theatre and exercises ultimate control over matters pertaining to labor relations (R. 346, 374; 100, 139-140).

## II. The Board's decision

The Board found that, after Section 8 (b) (6) went into effect in August 1947, the Union sought only to secure the employment of its members for the performance of actual work (R. 375). The Board held that, since the prohibition of Section 8 (b) (6) was limited to the causing of payment "for services which are not performed or not to be performed," that Section did not proscribe union activity aimed at securing employment and payment for the performance of actual work (R. 375-378). The Board rejected as immaterial the trial examiner's recommended finding (R. 361-362) that the services proffered by the Union were unwanted and unneeded by the Company (R. 376-378).<sup>4</sup> Accord-

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<sup>4</sup> The examiner also recommended the finding that the services proffered by the Union were not actually to be performed by the musicians (R. 362-363). The Board rejected this recommendation as totally without support in the evidence (R. 374-375). The court below, while agreeing with the examiner that the services were unwanted and unneeded by the Company, did not disturb the Board's finding that they were actually to be performed.

ingly, the Board dismissed the ~~complaint~~ against the Union (R. 379).<sup>5</sup>

### III. The Court's decision

The court below agreed with the examiner that the services offered by the Union were unwanted and unneeded by the theatre management as evidenced by its persistent position "that it had no need for such services, did not desire them, and that they would be a detriment rather than an advantage to it" (R. 397). It held that to "force the theatre to pay for services not needed, and of detriment to it was clearly an exaction" (R. 398). It considered immaterial the "assertion of the union that it desires to perform" (R. 398), reasoning that the "dominant purpose" of Section 8 (b) (6) was to safeguard employers from paying for unwanted and unneeded services (R. 398). Accordingly, the court below set aside the Board's order of dismissal and remanded the case to the Board "for further proceedings not inconsistent herewith" (R. 399).

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<sup>5</sup> The examiner also recommended that the complaint be dismissed (R. 364-366). This recommendation was premised upon his finding that the Union had ~~not~~ exerted any coercive economic pressure in aid of its demands, and that the payments sought, therefore, could not constitute an "attempt to cause" "in the nature of an exaction" within the meaning of Section 8 (b) (6). In its disposition of the case, the Board, having found that the end sought by the Union was not prohibited, had no occasion to reach the further question whether the means employed by the Union were forbidden by Section 8 (b) (6) (R. 371, 376, 383).



### SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that, although a labor organization seeks an agreement for the payment of services actually to be performed, Section 8 (b) (6) of the Act is applicable if it is the employer's position that he does not want or need the services.
2. In failing to affirm the order of the Board dismissing the complaint.

### REASONS FOR GRANTING THE WRIT

Section 8 (b) (6) of the National Labor Relations Act makes it an unfair labor practice for a labor organization or its agents:

to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

In holding that this provision precludes a union from attempting to secure actual work for its members whenever the employer takes the position that he does not want or need the work, the court below reaches a result which is in conflict not only with other circuits on a significant point in the administration of the Act but also with the wording and history of the statutory provision.

1. As stated in our memorandum in *American Newspaper Publishers Association v. National*

*Labor Relations Board*, No. 53, this term, in which we do not oppose the grant of the petition for a writ of certiorari limited to the question of the interpretation of Section 8 (b) (6) of the Act, the decision below conflicts with the decision of the Court of Appeals for the Seventh Circuit in the *Newspaper Publishers* case, 193 F. 2d 782, and also conflicts in principle with the decision of the Court of Appeals for the Second Circuit in *Rabouin v. National Labor Relations Board*, 195 F. 2d 906, 912-913 (C. A. 2). Unlike the court below, which regards the employer's need or desire for the work as decisive of a union's right to seek the employment of workers to do and be paid for doing it, the Seventh Circuit considers the value of the work to the employer as immaterial and looks only to whether it is to be performed. Section 8 (b) (6) cannot be intelligently administered without resolving this fundamental conflict in its interpretation.

2. The proper interpretation of Section 8 (b) (6) has widespread importance in the conduct of labor relations in the United States. If the decision below is correct, every attempt by a union to obtain additional employment, every resistance by a union to an employer's attempt to reduce his force, and every change in the work content of a particular job which a union or an employer proposes or opposes, will probably present a question whether the work in issue is within or without the

in view of Section 8 (b) (6). The decision below would thus inject the Board into a nation-wide inquiry into the worth of disputed work. At the least, it would confront both the Board, and labor and management negotiators, with a constant stream of problems involving the relationship of Section 8 (b) (6) to the value and need of disputed work.

3. The court below misreads the text of Section 8 (b) (6), misconceives the import of its legislative history, and adopts a reading precisely contrary to that which Congress intended.

a. Unions are forbidden by Section 8 (b) (6) to engage in activity directed at obtaining from employers payments which (1) are "in the nature of an exaction" and (2) are made "for services which are not performed or not to be performed." Both elements are prerequisites to the making out of a violation.

The requirement that the work be "performed" is the sole statutory criterion qualifying the character of the "services" for which payment may be demanded. The distinction is between labor actually expended and no work. As the Court of Appeals for the Seventh Circuit held, "the only practice covered by § 8 (b) (6) was the practice of demanding money where no work had been done." *American Newspaper Publishers Association v. National Labor Relations Board*, 193 F. 2d 782, 801; accord, *Rabouin v. National Labor Relations Board*, 195 F. 2d 906, 912 (C. A. 2). In this

case, since the Union sought an agreement for the performance of actual work and payment for it, it did not "attempt to cause an employer to . . . agree to pay . . . for services . . . not to be performed."

The court below treats the phrase "for services which are not performed or not to be performed" as surplusage. It reads Section 8 (b) (6) as prohibiting the causing or attempting to cause payments "in the nature of an exaction," without more. Having thereby left at large what is "in the nature of an exaction," the court below innovates as a standard the want or need of the employer or a blend of the two. The substituted standard makes Section 8 (b) (6) read as a prohibition against causing or attempting to cause an employer to agree to pay "for services which, although they are performed or to be performed, are unwanted or unneeded by the employer." Nothing in the language or the legislative history warrants so basic a transformation of the words chosen by Congress to express its purpose.

b. The legislative history of Section 8 (b) (6) shows that the meaning given it by the court below is diametrically opposed to that of Congress.

Section 8 (b) (6) originated in the House of Representatives. Derived primarily from the Lea Act (60 Stat. 89, 47 U. S. C. 506), which regulated certain featherbedding practices in the radio broadcasting industry, the House bill outlawed



union activity directed at compelling employer accession to the following practices:<sup>6</sup> (A) employment of more persons than reasonably required, (B) payment of money in lieu of employing such unnecessary employees, (C) payment more than once for services performed, (D) payment for services not to be performed, and (E) payment of a tax or exaction for the privilege of using any machine, equipment, or material or to agree to restrictions upon their use.

The Senate bill contained no regulation of featherbedding.<sup>7</sup> In conference, the House proposal relating to unperformed work was adopted and ultimately became Section 8 (b) (6); the independent proposal relating to unneeded work was rejected. And the legislative history shows that the "need" criterion was deliberately deleted; when Congress rejected the House bill's prohibition against unnecessary work it did so on the merits and not because it believed that the additional prohibition was mere surplusage. In his major address presenting the conference agreement to the Senate (93 Cong. Rec. 6441), and in his written statement submitted contemporaneously (93 Cong. Rec. 6443), Senator Taft explained the reasons for the sharp curtailment of

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<sup>6</sup> H. R. 3020, 80th Cong., 1st Sess., Secs. 2 (17), 12 (a) (3) (B), April 18, 1947.

<sup>7</sup> S. 1126, 80th Cong., 1st Sess., April 17, 1947.

the House bill: (1) The conferees "felt that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, and a determination of facts which it seemed to me would be almost impossible"; (2) "the conferees were of the opinion that general legislation on the subject of featherbedding was not warranted at least until the joint study committee proposed by this bill could give full consideration to the matter"; (3) pending such full study, the conferees were unwilling to go further than to make it "an unlawful labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine...." Accordingly, except for the "fairly clear case, easy to determine," where a union accepts "money for people who do not work," Congress withheld all regulation of featherbedding.

Nevertheless, the court below expanded the scope of Section 8 (b) (6) to include unwanted or unneeded work within its ban. In support of this enlargement, the court relied on a subsequent remark made by Senator Taft, which, in the court's view, illuminates its "dominant purpose" (R. 398). This remark is (93 Cong. Rec. 6446):

It is intended to make it an unfair labor practice for a man to say, "You must have 10 mu-

sicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway." That is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept.

Only by ignoring the place of this statement in the context of the debate can it have the freewheeling meaning which the court below imputes to it. After Senator Taft had made clear that the only forbidden demand was for "money for people who do not work," Senator Pepper expressed fear that, because no actual work is performed, such practices as call-in pay and paid rest periods would be banned (93 Cong. Rec. 6446). Endeavoring to reassure his colleague of the continued validity of such payments, Senator Taft used the quoted example to illustrate the difference; both situations presupposed that no actual work was done, but Senator Pepper's example depicted the kind of lack of work which was not outlawed because payment for it was not in the "nature of an exaction." Even if Senator Taft's example be taken in isolation from the debate, it would appear to refer only to payment to men who did not work:—despite the fact that there is no "room" for the four musicians to play, and therefore they would not actually work, the employer "must pay for the other 4 anyway." Considered in the context of the debate—which showed (1) that the ban against

causing the employment of unnecessary workers had already been rejected, (2) that only the causing of payment for not working was prohibited, and (3) that the colloquy between Senators Taft and Pepper was directed solely toward differentiating permissible and impermissible payments despite the failure to work—Senator Taft's example plainly presupposed that "the other 4" musicians would be paid for not working.

Any doubt is dispelled by later authoritative explanations. Senator Taft thereafter again emphasized that Section 8 (b) (6) prohibits exacting payment only "in lieu" of work (93 Cong. Rec. 6859), and Senator Ball explained that "it applied only to situations, for instance, where the Musicians' Federation forces an employer to hire one orchestra and then to pay for another standby orchestra, *which does no work at all*" (93 Cong. Rec. 7529; emphasis supplied). Accordingly, when the court below states that the analogy between Senator Taft's example and the present case "falls barely short of perfection, and reaches it if we substitute 'need' for 'room'" (R. 398), it is indulging in the same basic alteration of the legislative history of Section 8 (b) (6) as it has of the text.<sup>8</sup>

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<sup>8</sup> In the court below, the Company disclaimed the meaning which the court embraces. The Company stated "That, frankly, it appears to have been a momentary lapse in the Senator's part into the broader language of the Lea Act, to have been made in the heat of debate, and to be inconsistent



c. The court below also failed to address itself to the irreconcilable dilemma which its interpretation of Section 8 (b) (6) creates and which conclusively shows its error. If, as the court below holds, the employer's want or need for work is pertinent, a decision of this question would be required in every case. It would be necessary either (1) to have the Board decide whether the work is desired or needed, or (2) to permit the employer's unilateral determination to prevail. It is clear that neither alternative was acceptable to Congress, and that it therefore necessarily rejected any criterion of need or want, for it found no satisfactory means of resolving the issue.

As already shown (*supra*, pp. 13-15), except for the "fairly clear case, easy to determine" of accepting "money for people who do not work," Congress withheld all regulation of featherbedding, and a major reason for doing so was to avoid conferring on the Board the function of deciding the number of workers needed. To require the Board, nevertheless, to decide whether an employer wants or needs work is to cast upon it the very role which Congress refused to assign.

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with the true meaning of 'in the nature of an exaction' as used in the statute . . . ." (Reply brief, p. 6). We believe it is unnecessary to explain away Senator Taft's statement in this fashion, but, if the statement does have overtones inconsistent with the text of Section 8 (b) (6) and the remainder of its legislative history, we believe that the Company has hit closer to the mark than the court.

The remaining alternative, having the employer's unilateral determination control, was no less unacceptable to Congress. The report accompanying the House bill made it clear that an employer's need for workers was to be determined, not by the employer himself, but by an impartial body applying objective standards (H. Rep. No. 245, 80th Cong., 1st Sess., 25), and the conferees, in their consideration of the wise scope of featherbedding regulation, presupposed that the Board and not the employer would determine the question of need if the legislation were to extend that far. Furthermore, reference to the Lea Act, "From which the House language was taken" (93 Cong. Rec. 6443), conclusively shows that only an impartial and objective determination was ever considered. Under the Lea Act, an employer's desires play no decisive part in determining the legality of a request for employment. 92 Cong. Rec. 1546, 1564, 3245, 3256. It is settled that "an employer's statements as to the number of employees 'needed' is not conclusive as to that question," but it must be determined by a jury on the basis of "many factors." *United States v. Pettrillo*, 332 U. S. 1; 6, 7.

Accordingly, it is plain that an employer's want or need for work is not pertinent to Section 8 (b) (6), because Congress refused to have that issue resolved by either the Board or the employer, and the deliberate absence of a means of deciding this

issue, vital to the holding below, necessarily demonstrates its irrelevance.

4. The Court of Appeals states that to make the application of Section 8 (b) (6) turn on the distinction between working and not working is "to ascribe to Congress a purpose to condemn certain practices in labor relations and at the same time to use a form of expression that permits escape from its condemnation" (R. 398). But the difference between receiving payment for working and payment for not working is more than a matter of mere syntax. *United States v. Local 807*, 315 U. S. 521, 534. Congress extended its regulation to require work, but it left to the pressure and persuasion of the bargaining process the determination whether the employer should accede to a demand for work and the manner in which work should be done to yield the employer the greatest benefit.

To interpret Section 8 (b) (6) as directed only at requiring work does not, as the court below seems to imply, permit easy evasion of the statute's actual prohibition against obtaining payment for *not* working. A union's mere statement that it proposes to perform work is not conclusive of the *bona fides* of its offer. Like every other question of fact, whether the union is actually in good faith offering to perform work must be evaluated in the light of ~~all the~~ circumstances. Whatever a union's professions may be as to its desire to secure actual

employment, "the inquiry must nevertheless be directed to whether . . . [it] honestly intended to obtain a chance to work for a wage." *United States v. Local 807*, 315 U.S. 521, 534. In this case, the Board found, after assessing all the evidence, that the Union did honestly intend to perform the work it sought, and this finding was not disturbed by the court below (*supra*, p. 8, n. 4).

For the court below to say that the same vice may arise from the unregulated as from the regulated area is to ignore the point at which Congress chose to stop. Congress fully appreciated the distinction between stand-by and make-work practices in featherbedding. Stand-by practices require payment where no work is done, which Section 8 (b) (6) forbids, while make-work practices concern payment for actual work which the employer considers of no value—which 8 (b) (6) does not reach. Because the court below refuses to follow Congress in this distinction, it does not discern the significance of the Union's change from a stand-by to what is, at worst, a make-work practice.

The court thus overlooks a vital element of the legislative process. "Legislation is often tentative, beginning with the most obvious case, and not going beyond it, or to the full length of the principle upon which its acts must be justified." Mr. Justice Holmes in *Beard v. Boston*, 151 Mass. 96, 97, 23 N. E. 826, 827. It is this "cautious advance,



step by step, and the distrust of generalities which sometimes have been the weakness, but often the strength, of English legislation." Mr. Justice Holmes in *Carroll v. Greenwich Insurance Co.*, 199 U. S. 401, 411. This approach is characteristic of the amendments to the Act. In "a matter of such bitter controversy as the Taft-Hartley Act, the product of careful legislative drafting and compromise beyond which its protagonists either way could not force the main body of legislators, the courts should proceed cautiously." *Rabouin v. National Labor Relations Board*, 195 F. 2d 906, 912 (C. A. 2). "Congress could have outlawed all so-called 'featherbedding' but apparently did not see fit to do so" (*American Newspaper Publishers Association v. National Labor Relations Board*, 193 F. 2d 782, 801 (C. A. 7), pending on petition for a writ of certiorari, this Term, No. 53). To adopt the interpretation of the court below "would warp § 8 (b) (6) into a broader provision than it was intended to be" (*Rabouin v. National Labor Relations Board, supra*).<sup>9</sup>

<sup>9</sup> The court below also justifies its interpretation by asserting that, while the result is that "the field of activity for a small orchestra may be somewhat curtailed," "at the same time the market for the services of much larger musical organizations is greatly enhanced" (R. 398). This is an irrelevant consideration, even if it were correct. The membership of the American Federation of Musicians is composed of musicians playing for both small and large orchestras and the policy it adopts presumably represents its considered accommodation of the interests of both, reached and embraced

# CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN;  
*Solicitor General.*

GEORGE J. BOTT,  
*General Counsel,*  
*National Labor Relations Board.*

JULY, 1952.

by both. Neither the Board nor the courts can presume to know the best interests of different groups within a union better than they know them themselves. Nor have the Board or the courts been assigned to mediate the conflicting interests within or between the ranks of management and labor.

were paid a sum equal to the minimum union wage for a similar engagement, although they played no music on these occasions (R. 347, 372; 64-66, 68-69, 71-72, 234). The last such payment was made to the local orchestra on July 2, 1947, over a month prior to August 22, 1947, the effective date of the amendments to the National Labor Relations Act, which included Section 8 (b) (6) (R. 347, 372; 104).

Between July 2, when the last such payment was made, and November 12, 1947, seven performances of name bands were presented on the stage of the Palace Theatre. During this time the Union voiced no objection to the performances, nor did it make any demands for either the employment or the payment of local musicians (R. 347, 372; 104-105). Late in October 1947, the Union requested the Palace management to employ a "pit" orchestra composed of local musicians; proposed that the local orchestra play intermissions, overtures and "chasers"<sup>1</sup> whenever a traveling band performed on stage; and stated that, unless an agreement was reached concerning the employment of local musicians, traveling bands would not be authorized to appear at the Palace<sup>2</sup> (R. 347-348, 372;

<sup>1</sup> Under the arrangement suggested, the local orchestra would provide "a small musical prologue before the actual show went on, and some music after the show while people were filing in and out of their seats" (R. 110).

<sup>2</sup> Article 18, Section 4, of the constitution and bylaws of the American Federation of Musicians, provides: "Traveling members cannot, without the consent of a Local, play any presentation performances in its jurisdiction unless a local house orchestra is also employed" (G.C. Exh. Nos. 3 and 23, R. 35).

105-106). The management refused the services of a local orchestra, stating that the theatre had no need for local musicians; that their services had not been used, although paid for, in the past; and that their performance in conjunction with the appearance of a traveling band would interfere with the operation of the theatre (R. 348, 372; 105-106).

At the time the Union requested the employment of the local musicians, the theatre had scheduled a performance of the Ray Eberle band for November 20 (R. 348, 372; 105-106). In the course of refusing to employ a local orchestra, the theatre management stated that, if the Ray Eberle band were permitted to appear on November 20, as scheduled, the theatre would not contract for any further performances of traveling bands until an agreement could be reached with the Union (*ibid*). This proposal was unsatisfactory to the Union, and no agreement having been reached, the Ray Eberle show did not fill its engagement (R. 348-349, 372-373; 106-107). This was in accordance with union policy, whereby unless the local musicians consent, traveling bands make no local appearances (*supra*, p. 4, n. 2).

Negotiations between the Company and the Union were not resumed until late in 1948 or early in 1949 (R. 349, 373; 108; 110). On May 8, 1949, at a meeting with the management, the Union sought to obtain a guarantee that a local orchestra would be employed in some proportion to the number of engagements given traveling bands (R. 351, 373; 144-145, 110, 148-149, 159-161, 189-189, 216-218).

To this end, the following alternate forms of employment were suggested by the Union: (1) that a local orchestra be stationed in the theatre pit to play an overture before, and a "shirttail" or "chaser" after, the performance of a name band, in addition to providing music during intermissions (R. 349-350, 373; 148, 216, 219); or (2) that a local orchestra, instead of the name band, be used in the pit to provide music for those vaudeville acts which were not an integral part of a name band ensemble (R. 350, 373; 148, 186-187, 218);<sup>3</sup> or (3) that a local orchestra be given separate engagements to perform on stage with vaudeville acts booked into the theatre by the management (R. 350, 373; 113, 219); or (4) that a local orchestra be employed and used on half of the total number of stage shows presented each year (R. 350, 373; 146-147, 188-189, 219).

Every proposal made by the Union at this meeting, as well as during the entire course of negotiations, contemplated the performance of actual work by the local orchestra, and no suggestion was ever made that local musicians be paid for not working, as the theatre manager admitted in the course of the proceedings (R. 148):

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<sup>3</sup> A distinction exists, in the entertainment field, between a "unit show," which consists of a traveling band having vaudeville acts as a regular part of its performances, and a traveling band (usually a dance band), which merely engages vaudeville acts on a temporary basis for one or more theatre engagements (R. 187, 218). The Union's proposal applied to the latter situation.



Q. Now, on all of these occasions, in which [Union] members were to appear or play, [the Union representative's] suggestion was that his members actually work on these occasions, isn't that true?

A. I would imply that.

\* \* \* \* \*

Q. But he said that he wanted his people to work on those occasions?

A. That is right.

Q. He never asked you to pay them for not working, for not being there?

A. That is right.

As the theatre manager further admitted (R. 155), the concurrent employment of a traveling band and a local orchestra would not have posed any problem concerning the adequacy of the theatre's physical facilities. Traveling bands customarily perform on the stage of a theatre (R. 347, 350; 105, 162), and the Union had proposed that the local orchestra perform in the Palace pit during concurrent engagements with such organizations (*supra*, pp. 4-6).<sup>4</sup>

The Company rejected the Union's proposals on

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<sup>4</sup> Before 1940, when the local orchestra performed on a regular basis, this was the arrangement which prevailed when a traveling band appeared (*supra*, p. 3). Furthermore, since the name band and the local orchestra were to play at different times,—the name band to play its musical selections and the local orchestra to accompany vaudeville acts or to play intermissions, overtures, and "chasers"—there would be no conflict in their renditions.

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No. 238

**In the Supreme Court of the United States**

OCTOBER TERM, 1952

NATIONAL LABOR RELATIONS BOARD, PETITIONER

GAMBLE ENTERPRISES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD

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# In the Supreme Court of the United States

OCTOBER TERM, 1952

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No. 238

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GAMBLE ENTERPRISES, INC.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD

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## OPINIONS BELOW

The opinion of the court below (R. 395) is reported at 196 F. 2d 61. The findings of fact, conclusions of law, and order of the Board (R. 370-385, 343-367) are reported at 92 NLRB 1528.

## JURISDICTION

The judgment of the court below was entered on May 9, 1952 (R. 395). The petition for a writ of certiorari, filed on July 30, 1952, was granted on

October 13, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 and Section 10 (e) of the National Labor Relations Act, as amended.

#### QUESTION PRESENTED

Whether it is an unfair labor practice under Section 8 (b)(6) of the National Labor Relations Act for a labor organization to attempt to secure the employment of its members for the performance of actual work, and to have the employer agree to pay for the work done, where it is the employer's position that he does not want or need the work:

#### STATUTE INVOLVED

The pertinent provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, 141, *et seq.*), is set forth *infra*, pp. 15-16.

#### STATEMENT

After the usual proceedings under Section 10 of the National Labor Relations Act, the National Labor Relations Board on January 24, 1951, issued an order (R. 379) dismissing an unfair labor practice complaint (R. 6-8) which, based on charges filed by Gamble Enterprises, Inc. (R. 1-3, 4-5), alleged that Local No. 24, American Federation of Musicians, had engaged in conduct which violated Section 8 (b)(6) of the Act. Section 8 (b)(6) makes it an unfair labor practice for a labor organization to attempt to cause an employer to pay or agree to pay money or other thing of value, "in the nature of an exaction, for services which are not performed or not to be performed." The facts



pertinent to the complaint may be summarized as follows:

### **I. The Board's Findings of Fact**

Before the decline of vaudeville in 1940, the Palace Theatre in Akron, Ohio, one of a chain of theatres owned by the Company, regularly employed a local orchestra of nine musicians, all members of the Union, to provide music for stage acts performing at the Palace. During this pre-1940 period, the performance of vaudeville acts was a regular part of the theatre's program. When, in addition to vaudeville acts, a traveling band appeared on the stage of the Palace, the local or "house" orchestra played from the pit for the vaudeville acts and, at times, augmented the traveling band. (R. 61, 75, 79, 207, 208-210).

Since 1940, the showing of vaudeville has been abandoned, and the Palace Theatre has been used primarily for the exhibition of motion pictures, occasionally supplemented by the appearance of traveling bands of national reputation for limited engagements (R. 346, 371-372; 101-103). The local musicians, no longer employed on a regular basis, continued to hold periodic rehearsals at the theatre and were available for such services as might be required, but they provided music for only a few performances during the three years preceding July, 1947. (R. 347, 372; 64-65, 67, 69-70, 79-80, 84-85, 213-214). Nevertheless, between 1940 and July, 1947, whenever a traveling band appeared at the theatre, the members of the local orchestra

the ground that the services of local musicians were unnecessary, as well as economically infeasible (R. 350; 155-156, 160). The Company offered to employ a local orchestra whenever a show was presented at the Palace which was not accompanied by a traveling band, but it refused to give any assurances concerning the number of such presentations (R. 350-351, 373; 148-149, 217-218). No agreement was reached by the parties at the May 8 meeting (R. 351, 373; 44-45, 155, 160-161, 220-221).

On June 24, the theatre management informed the Union that it intended to engage traveling bands with accompanying acts, making it clear that the performance of local musicians on such occasions would be unacceptable (R. 351-352; 338-339). A month later the Company contracted with a Chicago booking agency for the appearance of "Roy Acuff and his Grand Ole Opry" at the Palace (R. 353, 373; 116). The manager of the Acuff show subsequently inquired of the Union's representative, by wire and telephone, whether the Union had any objection to the performance of the Acuff band. In each instance, the Union replied that no agreement had been reached with the theatre management (R. 354, 373; 51-52, 192-193). The Roy Acuff show did not fill its engagement (R. 354, 373; 116).

At an ensuing meeting between the Company and the Union in December 1949, the management announced that an RKO vaudeville unit, then appearing in Youngstown, Ohio, was available for local bookings and required the services of an orchestra (R. 355-356, 374; 118-119). The Company offered

to book this unit for an appearance at the Palace and to engage the local orchestra to accompany its performance. The Company conditioned this offer on the Union's assent to the subsequent appearance of a traveling band for a separate engagement at which the local orchestra would not perform (R. 356, 374; 118-119, 133-135).<sup>5</sup> The proposal was entirely satisfactory to the Union, which offered to enter into a contract embodying these terms (R. 356, 374; 120, 194, 241-243). The proposed arrangement never went into effect, however, for it was vetoed by the Company's New York office (R. 356, 374; 120, 194-195), which determines the policies governing the operation of the theatre and exercises ultimate control over matters pertaining to labor relations (R. 346, 374; 100, 139-140).

Insofar as the record shows, no further negotiations of any consequence have occurred between the Company and the Union (R. 356; 195). However, at oral argument before the Board, Union counsel stated that the Company and the Union "have executed a new agreement and shows are again being held at Akron employing local people under an arrangement very similar to what we were speaking about, namely, the employment of our people on the basis of 50 percent of the engagements which the theater schedules, a guarantee of such employ-

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<sup>5</sup> As the theatre manager testified, he was and is anxious to book shows of the RKO vaudeville unit type into the Palace, and that, in spite of his lack of experience with such shows, he was perfectly willing to try them, for "it would fulfill [the Union's] demand to give the local musicians work" (R. 118-119, 128).

ment." Transcript of Oral Argument Before the Board, p. 87.<sup>6</sup>

## II. The Board's Conclusions and Order

The Board found that, after Section 8 (b) (6) went into effect in August 1947, the Union sought only to secure the employment of its members for the performance of actual work (R. 375). The Board held that, since the prohibition of Section 8 (b) (6) is limited to causing payment "for services which are not performed or not to be performed," that Section did not proscribe union activity aimed at securing employment and payment for the performance of actual work (R. 375-378). Because, as it read the statute, the character of the "services" is qualified only by the requirement that it be "performed," the Board rejected as immaterial the trial examiner's recommended finding (R. 361-362) that the services proffered by the Union were unwanted and unneeded by the Company (R. 376-378).<sup>7</sup> Accordingly, the Board dismissed the complaint against the Union (R. 379).<sup>8</sup>

<sup>6</sup> A copy of this transcript has been lodged with the Clerk.

<sup>7</sup> The examiner also recommended the finding that the services proffered by the Union were not actually to be performed by the musicians (R. 362-363). The Board rejected this recommendation as totally without support in the evidence (R. 374-375). The court below, while agreeing with the examiner that the services were unwanted and unneeded by the Company, did not disturb the Board's finding that they were actually to be performed. (See pp. 18-26, *infra*).

<sup>8</sup> The examiner had also recommended that the complaint be dismissed (R. 364-366). He premised his recommendation on his finding that the Union had not exerted any coercive economic pressure in aid of its demands, and that therefore the



### III. The Court's Decision

The court below agreed with the examiner that the services offered by the Union were unwanted and unneeded by the theatre management as evidenced by its persistent position "that it had no need for such services, did not desire them, and that they would be a detriment rather than an advantage to it" (R. 397). It held that to "force the theatre to pay for services not needed, and of detriment to it was clearly an exaction" (R. 398). It considered immaterial the "assertion of the union that it desires to perform" (R. 398), reasoning that the "dominant purpose" of Section 8 (b) (6) was to safeguard employers from paying for unwanted and unneeded services (R. 398). Accordingly, the court below set aside the Board's order of dismissal and remanded the case to the Board "for further proceedings not inconsistent herewith" (R. 399).

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Union did not "attempt to cause" payments "in the nature of an exaction" within the meaning of Section 8(b)(6). The examiner reasoned that the agreement between the name band and the theatre management for the appearance of the name band at the Palace was expressly subject to "all the rules, laws and regulations of the American Federation of Musicians" (R. 364); that the rules of the Federation provided that, in the absence of an agreement between the theatre and the local union, traveling bands make no appearances unless the local union consents (R. 364-365); and therefore, by its contract with the name band, the theatre had assented to the failure of the name band to fill its engagement if no agreement was reached with the local union (R. 365-366). In its disposition of the case, the Board, having found that the end sought by the Union was not prohibited, did not reach the further question whether the means employed by the Union were forbidden by Section 8(b)(6) (R. 371, 376, 383).

## SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that, although a labor organization seeks an agreement for the payment of services actually to be performed, Section 8 (b) (6) of the Act is applicable if it is the employer's position that he does not want or need the services.

2. In failing to affirm the order of the Board dismissing the complaint.

## SUMMARY OF ARGUMENT

## I

Substantial evidence on the record considered as a whole supports the Board's finding, not disturbed by the court below, that the Union attempted to secure the employment of its members for the performance of actual work. The agreement which the Union sought to reach with the Company was for payment for work actually to be done.

## II

A. Under Section 8 (b) (6) of the Act, the performance of work is the sole test of the lawfulness of a demand for employment. Except to require that work be "performed" there is no other statutory criterion qualifying the character of the "services" for which payment may be demanded. The distinction is between labor actually expended and no work. In this case, inasmuch as the Union sought an agreement for the performance of actual work and payment for it, it did not "attempt" to

cause an employer to . . . agree to pay . . . for services . . . not to be performed." Nothing in this statutory language suggests that, once it is shown that work is to be done, there is to be a further inquiry into whether the work is wanted or needed by the employer.

B. The legislative history of Section 8 (b)(6), like its text, shows clearly that a union's attempt to secure the employment of its members for the performance of actual work is not forbidden, whether or not the work is wanted or needed by the employer. The House bill, in addition to prohibiting payment for services not to be performed, also prohibited employment of more persons than reasonably required. The Senate bill, on the other hand, contained no regulation of featherbedding. In conference, only that part of the House proposal forbidding payment for unperformed work was adopted and ultimately became Section 8 (b)(6); the independent proposal forbidding unneeded employment was rejected.

There is no doubt that Congress rejected the proposal to regulate unneeded employment because that body thought it unwise and premature to legislate on that subject. In his major address presenting the conference agreement to the Senate (93 Cong. Rec. 6441), and in his written statement submitted contemporaneously (93 Cong. Rec. 6443), Senator Taft explained the reasons for the sharp curtailment of the House bill: (1) The conferees "felt that it was impracticable to give to a board or a court the power to say that so many men are all

right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, and a determination of facts which it seemed to me would be almost impossible"; (2) "the conferees were of the opinion that general legislation on the subject of featherbedding was not warranted at least until the joint study committee proposed by this bill could give full consideration to the matter"; (3) pending such full study, the conferees were unwilling to go further than to make it "an unlawful labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine. . . ." Accordingly, except for the "fairly clear case, easy to determine," where a union "accept[s] money for people who do not work," Congress withheld all regulation of featherbedding. See also, 93 Cong. Rec. 6859, 7529.

C. The court below failed to address itself to the irreconcilable dilemma which its interpretation of Section 8 (b)(6) creates and which conclusively shows its error. If, as the court below holds, the employer's want or need for work is pertinent, a decision of this question would be required in every case. It would be necessary either (1) to have the Board decide whether the work is desired or needed, or (2) to permit the employer's unilateral determination to prevail. It is clear that neither alternative was acceptable to Congress, and that it therefore necessarily rejected any criterion of need or want, for it neither found nor prescribed a satis-



factory means of resolving the issue.

D. Congress extended its regulation of featherbedding practices to require that work be performed. But it left to the pressure and persuasion of the bargaining process the determination whether the employer shall accede to a demand for work and the manner in which work should be done to yield the employer the greatest benefit. The court below rejected this view of Congressional policy, stating in effect that Section 8 (b) (6) should be interpreted to reach unneeded or unwanted work as well as unperformed work, because the same vice of featherbedding inheres in both. But to interpret Section 8 (b) (6) in this fashion is to ignore the point at which Congress chose to stop. Congress fully appreciated the distinction between stand-by and make-work practices in featherbedding. Stand-by practices require payment where no work is done. These Section 8 (b) (6) forbids. Make-work practices concern payment for actual work which the employer considers of no value. These Section 8 (b) (6) does not reach. To refuse to follow Congress in this distinction is to fail to appreciate Congress' circumspect approach to featherbedding regulation.

#### ARGUMENT

Section 8 (b) (6) of the Act provides that it shall be an unfair labor practice for a labor organization or its agents:

to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature

of an exaction, for services which are not performed or not to be performed.

Unions are thereby prohibited from causing or attempting to cause employers to make payments which (1) are "in the nature of an exaction," and (2) are made "for services which are not performed or not to be performed." Both elements are prerequisites to making out a violation; in the absence of either one, a union engages in no unfair labor practice forbidden by Section 8 (b) (6).

In this case, as the Board found, the Union sought to have its members employed to perform *actual* work. The Board therefore concluded that there was no attempt to cause payment "for services which are not performed or not to be performed."<sup>9</sup> However, the court below held, as the Company contends, that the statutory prohibition is violated if the work actually to be performed is a service which the employer maintains he neither wants nor needs.<sup>10</sup> Accordingly, the primary question presented is whether the statutory phrase—"services which are not performed or not to be performed"—can be expanded to include within its ban services which, though to be performed, are thought by the employer to be unwanted or unneeded.

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<sup>9</sup> As stated (*supra*, p. 10, n. 8), the Board dismissed the complaint on this ground. It did not reach the further questions of the meaning and application of the statutory terms "to cause or attempt to cause [payment] in the nature of an exaction." These separate questions are discussed in the Board's brief in *American Newspaper Publishers Association v. National Labor Relations Board*, No. 53, this Term.

In Part I of this Argument we shall show that substantial evidence on the record considered as a whole supports the Board's finding that the Union attempted to secure the employment of its members for the performance of actual work and that the Union at no time relevant to this case attempted to obtain payments for work which was not actually to be performed.

In Part II of this Argument we shall show that where work is to be performed Section 8 (b) (6) does not prevent a union from seeking employment for its members even though the employer maintains that the work is unwanted or unneeded, because (1) the text of Section 8 (b) (6) makes the performance of work the sole test of the lawfulness of a demand for employment; (2) the legislative history of Section 8 (b) (6) similarly establishes that Congress withheld all regulation of featherbedding, except for the requirement that work be performed; (3) if the want or need for work were determinative of the lawfulness of a demand for employment, it would be necessary either that the Board decide this issue or that the employer's determination be accepted as conclusive; neither of these alternatives was acceptable to or adopted by Congress, which provided no means of deciding this issue; and (4) to extend Section 8 (b) (6) beyond requiring the performance of actual work would substitute for Congress' circumspect policy concerning featherbedding regulations a broader approach to the problem of featherbedding than

that which Congress was willing to undertake in the National Labor Relations Act.

# I.

**Substantial Evidence on the Record Considered as a Whole Supports the Board's Finding That the Union Attempted to Secure the Employment of its Members for the Performance of Actual Work and That the Union at No Time Relevant to This Case Attempted to Obtain Payments for Work Which Was Not Actually to be Performed**

The Board found that, subsequent to the effective date of the amendments to the Act, the Union attempted to secure the employment of a local orchestra to engage in the actual rendition of music at the Palace Theatre (R. 374-376). In the court below, the Company contended, however, "that the union never intended that the acts which they offered would in fact be performed" (Br. p. 28). The court below did not disturb the Board's contrary conclusion. This should end the matter. *National Labor Relations Board v. American National Insurance Co.*, 343 U.S. 395, 409-410. We anticipate that the company may nevertheless renew this contention. This section of our argument is therefore devoted to showing that, as the Board found, there is no evidence to support the Company's contention, much less evidence of the stature sufficient to detract from the substantial evidence supporting the Board's conclusion considering the record as a whole.

During the course of the 1949 negotiations, the



Union offered several alternative suggestions for the utilization of a local orchestra in the theatre program (*supra*, pp. 5-6). The common denominator of all these proposals, according to Theatre Manager Gamble's own testimony (R. 119, 148), was an insistence by the Union that local musicians be employed to provide musical performances of same type. As Gamble further testified (R. 112-113), the Union was willing to accept employment for its members either concurrently with traveling bands or on separate occasions. In connection with concurrent engagements, the Union suggested that the local orchestra be employed in the theatre pit either to provide music for those vaudeville acts which were not an integral part of the name band ensemble or to play musical selections during intermissions, as well as before and after the scheduled name band performance on stage; in the event that the Company preferred to engage the local orchestra on separate occasions, the Union proposed that its members be given employment in some fixed ratio to the number of appearances made by traveling bands, suggesting that the local musicians perform with vaudeville acts booked by the management. No proposal contemplated that payments were to be made regardless of whether or not the local musicians actually performed, and any speculative inference to the contrary is foreclosed by the testimony of Theatre Manager Gamble himself (R. 148):

Q. Now, on all of these occasions, in which [Union] members were to appear or play,

[the Union representative's] suggestion was that his members actually work on these occasions, isn't that true?

A. I would imply that.

\* \* \* \*

Q. But he said that he wanted his people to work on those occasions?

A. That is right.

Q. He never asked you to pay them for not working, for not being there?

A. That is right.

Accordingly, it is unquestionable that each of the Union's proposals embraced the actual rendition of music.

The impasse which did occur between the Company and the Union was, as Gamble testified (R. 114, 148-149), due to the Company's refusal to give the Union any assurances concerning the frequency with which engagements would be offered to local musicians. Nevertheless an agreement satisfactory to the Company's local management and the Union was subsequently reached whereby local musicians would appear with a traveling vaudeville unit requiring the services of an orchestra, and, following this engagement, the Company would have the option of engaging a name band for a separate appearance at which the local musicians would neither perform nor be paid (*supra*, pp. 8-9). Although the Union was willing to enter into a contract to this effect, the plan was rejected by the Company's New York office (*supra*, p. 9).

Thus, the facts of record indisputably show that the Union was seeking, and except for the veto of the Company's New York office, would have obtained actual employment for its members.

The Company, however, has embraced as its own the view of the trial examiner that no actual performance of work was sought by the Union (Br. below, p. 31). In harmony with the Board's conclusion, the examiner found as basic facts "that the [Union] was primarily interested in the *employment* of its members by the theatre management. Its members were ready and willing to provide music for the Palace Theatre if management of the theatre would contract for their services. The [Union] made several proposals as to the character and scope of the proffered services, and each of these *appeared* to contemplate actual performance. At no time did the [Union] propose, in so many words, that the local orchestra be paid for services not rendered" (R. 361). Nevertheless the examiner concluded that the Union sought payment "even though the local orchestra did not actually play any performances," arguing that, "True, this was never stated in so many words, but the persistence with which the [Union] insisted that the theatre management bargain on the employment of the local orchestra simultaneously with the appearance of the traveling bands, discloses the true intent" (R. 362). This inference of the examiner, wholly incompatible with the primary facts he found, was rejected by the Board as insupportable (R. 374-375).

*First*, the basis of every proposal offered by the Union was that the local orchestra provide music at times which would not conflict with the usual performances of traveling bands. By one of these proposals, upon which the Company and the examiner mainly rely, the local orchestra, if appearing simultaneously with a name band, was to play overtures, intermissions, and "chasers." Since the name band and the local orchestra were to play at different times, no conflict in their respective renditions was in issue. Furthermore, the local orchestra was to play from the pit, and, as is customary, the name band was to play from the stage, so that no space difficulty was presented. Indeed, prior to 1940, when the local orchestra performed on a regular basis, this was the precise arrangement which obtained when a traveling band appeared (*supra*, p. 3). Consequently the mere appearance of the local orchestra and the name band on the same show affords no basis for skepticism as to the sincerity of the Union's offer to play overtures, intermissions, and "chasers." And it certainly offers no basis for skepticism as to the Union's sincerity in offering to provide musical accompaniment for vaudeville acts, not an integral part of the name band's ensemble, which were booked to appear together with the name band (*supra*, p. 6).

*Second*, the Company has professed that the Union's position would be more credible if "the union had attempted to negotiate the employment of its people at times other than those at which name bands were simultaneously employed" (Br.



below, p. 30). This was precisely one of the alternatives which the Union proposed (*supra*, p. 6), which the Company's local management was ultimately willing to accept (*supra*, pp. 8-9), but which the Company's New York office rejected (*supra*, p. 9). To prevent being hoisted by its own petard, the Company has acknowledged the existence of this proposal by the Union, and then minimized it by arguing that "the union [1] never agreed to such an arrangement, [2] was not primarily interested in it, [3] exerted the strongest economic pressure at its command for over a year before being reduced to discussing it at all and, significantly, [4] still geared its demands to hiring of the outside name bands, insisting upon a fixed ratio between the vaudeville shows and the name-band engagements \* \* \*" (Br. below, p. 30). As to [1], the Union did agree to such an arrangement. As to [2], since the Union agreed, it was obviously "interested in it." As to [3], there is no evidence to support this statement; on the contrary, the Union proposed this arrangement in May 1949 (*supra*, pp. 5-6), and it was not until eight months later in December that the Company's local management accepted it only to have it rejected by the New York office; thus, it was the Company that was exerting "the strongest economic pressure at its command \* \* \* before \* \* \* discussing it at all." As to [4], of course the Union was gearing its work demands to the appearance of the name band, for the only effective economic lever available to it to secure the employment of its members with some regularity was the Com-

pany's desire to present name bands. Consequently, requests for local work advanced at any other time were predestined to failure, since only the incentive of presenting a name band would induce the Company to employ local musicians. It seems evident that the Union's recourse to an effective means of inducement to obtain employment cannot mean it was not interested in performing actual work.

*Third*, the persistence with which the Union sought in negotiations to obtain work cannot rationally imply that the Union was seeking to obtain payments for its members regardless of whether or not they actually performed. Either party is "free frankly to state the terms upon which he may yield and those upon which he will not yield."<sup>10</sup> The Union's persistence in attempting to secure some guarantee concerning the frequency with which its members would be employed, the crux of the dispute, was matched by the insistence with which the Company refused to grant such assurance. The length of time involved in the negotiations, as well as the frequency with which they occurred, the many compromises offered by the Union with regard to the type of work to be performed by its members, and the Union's demonstrated willingness to enter into a contract in accordance with its proposals, afford indicia of good faith which have

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<sup>10</sup> *National Labor Relations Board v. P. Lorillard Co.*, 117 F. 2d 921, 924 (C.A. 6), reversed on other grounds, 314 U.S. 512. See, also, *National Labor Relations Board v. American National Insurance Co.*, 343 U.S. 395, 404.

been long recognized.<sup>11</sup> Lest the good faith of all persevering bargaining be suspect, to persist in seeking a lawful demand cannot imply that an unlawful alternative is also acceptable.

*Fourth*, no credibility issue is involved in the examiner's rejected inference. There is no conflict in the evidence, and the examiner's primary findings, but not his inference from them, are in complete accord with the Board's conclusion that the Union's objective was to secure actual employment and not to reinstate the preamendment system of obtaining payments for no work. Since the significance of an examiner's report "depends largely on the importance of credibility in the particular case" (*Universal Camera Corp. v. National Labor Relations Board*, 340 U. S. 474, 496), and since the examiner's inference here does not rest on the "superior advantages of the examiner who heard and saw the witnesses for determining their credibility" (*Ohio Associated Telephone Co. v. National Labor Relations Board*, 192 F. 2d 664, 668 (C.A. 6)), the examiner's rejected inference is entitled to no independent weight as a factor detracting from the Board's conclusion. *National Labor Relations Board v. Wiltse*, 188 F. 2d 917, 925 (C.A. 6), certiorari denied *sub nom. Ann Arbor Press v. National Labor Relations Board*, 342 U. S. 859; *National*

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<sup>11</sup> *National Labor Relations Board v. Sands Mfg. Co.*, 96 F. 2d 721, 725, 726 (C.A. 6), affirmed, 306 U.S. 332; *National Labor Relations Board v. George P. Pilling & Son Co.*, 119 F. 2d 32, 37 (C.A. 3); *Rapid Roller Co. v. National Labor Relations Board*, 126 F. 2d 452, 459-460 (C.A. 7), certiorari denied, 317 U.S. 650.

*Labor Relations Board v. Chautauqua Hardware Corp.*, 192 F. 2d 492, 494 (C. A. 2); *National Labor Relations Board v. Globe Wireless*, 193 F. 2d 748, 751-752 (C. A. 9). In any event, whatever independent weight the examiner's conclusion should carry has been fairly and rationally offset by the Board's evaluation, and it is the Board's findings, not those of the examiner, which the statute states "shall be conclusive" if "supported by substantial evidence on the record considered as a whole \* \* \*" (Sec. 10(e) of the Act).

In sum, the Board's conclusion, which was not disturbed by the court below, is clearly supported by substantial evidence on the whole record. Indeed, if the evidence of the Union's conduct in this case fails to establish that it sought actual work, it is difficult to know what more a union can do to show the *bona fides* of its purpose.

## II.

**Section 8(b)(6) of the National Labor Relations Act Does Not Prevent a Labor Organization from Attempting to Secure Employment for its Members Even Though the Employer Maintains That the Work to be Covered by That Employment is Neither Wanted Nor Needed**

**A. The Text of Section 8(b)(6) Makes the Performance of Work the Sole Criterion**

The requirement that the work be "performed" is the sole statutory criterion qualifying the character of the "services" for which payment may be



demanding. The distinction is between labor actually expended and no work. As stated by the Court of Appeals for the Seventh Circuit, "the only practice covered by § 8 (b) (6) was the practice of demanding money where no work had been done." *American Newspaper Publishers Association v. National Labor Relations Board*, 193 F. 2d 782, 801, certiorari granted, No. 53, this Term. It is therefore immaterial that the product "was not ordinarily used by the employer," and was thus worthless to him, for "the necessary work to compose it was actually done by the employee. Requiring that the employer pay for such work was not a violation of Section 8 (b) (6)." *Id.*, at 802. And the Court of Appeals for the Second Circuit, expressly following the decision of the Court of Appeals for the Seventh Circuit, has agreed that Section 8 (b) (6) reaches only the type of practice where the payment demanded is unrelated to the actual doing of work. *Rabouin v. National Labor Relations Board*, 195 F. 2d 906, 912, 913, affirming, 87 N.L.R.B. 972, 977-978, 1014-1015.<sup>12</sup>

In the instant case, the Union sought an agreement for the performance of actual work and payment for it, and therefore it did not in the statutory language "attempt to cause an employer to \* \* \* agree to pay \* \* \* for \* \* \* services not to be performed." Moreover, had the Company ac-

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<sup>12</sup> The Court of Appeals for the Second Circuit affirmed the Board's decision that it was no violation of Section 8(b) (6) for a union to demand that an employer pay an employee for wages he lost because of a wrongful denial of employment.

cepted the Union's proffer of work and had that work actually been performed, it is clear that payment of the musicians for accompanying vaudeville acts or for playing intermissions, overtures, and "chasers" would be for "services \* \* \* performed." In that event the Union could not be charged in the statutory language with causing the employer "to pay \* \* \* for services which are *not* performed." There is no difference between the two situations contemplated by the present and future tenses, for the attempt of a union to secure pay for services must be judged by the same standard regardless of whether the work has already been performed or is to be performed in the future. Under Section 8 (b) (6), "to pay" is coequal with "agree to pay" and services "which are not performed" are coequal with services "not to be performed." If obtaining payment for work already done is permissible, it must be no less permissible to seek an agreement to do such work in the future and to be paid for it. In either case the only test of the character of the service is whether or not it is performed or to be performed.

To add to the requirement that the work be done the further requirement that the employer want or need it is to interpolate into Section 8(b)(6) an additional qualification that its words do not express. Had Congress intended such an enlarged purpose, it knew how to state it clearly. Fourteen months before Section 8(b)(6) was passed, Congress enacted the Lea Act to regulate feather-bedding practices in radio broadcasting (*infra*,

p. 34, n. 16). In the Lea Act, 60 Stat. 89, in addition to prohibiting the use of compulsive means to obtain payment "for services \* \* \* not to be performed," Congress also forbade the compulsive securing of employment of workers "in excess of the number of employees *needed*" by the employer "to perform actual services." (Emphasis supplied.) Indeed, in the House Bill, which was the immediate predecessor to Section 8(b)(6), the identical distinction was drawn (*infra*, pp. 34-35). Thus, when Congress has wished to regulate employment in terms of need, it has used precise words to effect that purpose. In Section 8(b)(6) as adopted, however, Congress incorporated only the requirement that the services be performed, and omitted any requirement that employment not be in larger numbers than necessary.

The court below, nevertheless, treated the phrase "for services which are not performed or not to be performed" as surplusage. It read Section 8(b)(6) as prohibiting causing or attempting to cause payments "in the nature of an exaction," without more. Having thereby left at large what is "in the nature of an exaction," the court below innovated as a standard the want or need of the employer or a blend of the two. The substituted standard makes Section 8(b)(6) read as a prohibition against causing or attempting to cause an employer to agree to pay "for services which, although they are performed or to be performed, are unwanted or unneeded by the employer."

This interpretation of Section 8(b)(6), which

we shall show is incompatible with its history and policy (*infra*, pp. 33-68), cannot stand, even as a textual reading. To express the meaning given it by the court below, the obvious way to have written Section 8(b)(6) (as Congress wrote it in the Lea Act and as the House wrote it in its bill), would have been to add to the phrase, "for services which are not performed or not to be performed," the further phrase, "or for services which are unwanted or unneeded by the employer." But to add this phrase when it does not appear in the section is to legislate in the guise of interpretation. It is "beyond the judicial power of innovation to supply a direct prohibition by construction." *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, 508.

The Company has urged in justification of the result reached by the court below, however, that infused in the word "services" is the concept of the employer's want or need for the work, and that Section 8(b)(6) should therefore be construed as if there had been expressly added to the word "services" the qualification "wanted or needed by the employer." Such an emendation cannot be incorporated into the text of Section 8(b)(6) without basically transforming its meaning.

Under the proposed revised reading, Section 8(b)(6) would prohibit compelled payment "for services, wanted or needed by the employer, which are not performed or not to be performed." This revision, instead of helping the Company, would actually contract the protection extended by Section 8(b)(6) for the employer would then be



safeguarded against the nonperformance only of wanted or needed services, and would be vulnerable to demands for unperformed services which are also unwanted and unneeded—in the face of the manifest Congressional purpose to condemn demands for payments for unperformed services.

The second step which must be taken to achieve the result reached by the court below from a literal standpoint is to make a further revision. At the least Section 8(b)(6) must be read to prohibit compelled payment “for services, unwanted or unneeded by the employer, which are not performed or not to be performed.” In order to make out a violation under this reading however, it would be necessary to show, not only that services are unperformed, but also that the services are unwanted or unneeded. This revision, instead of adding to the scope of the employer’s protection under Section 8(b)(6), detracts from it, for it requires proof that the services are unwanted or unneeded, a prerequisite which Section 8(b)(6) does not otherwise express, and yet leaves untouched the critical requirement of nonperformance. This distortion obviously would not help the Company in this case. For even if it could show that the services offered by the Union were unwanted or unneeded by it, the Company still could not show that the services were not to be performed, and nonperformance remains an indispensable element of the offense.

The third possible permutation is to interpret Section 8(b)(6) as precluding payment “for services, unwanted or unneeded by the employer, even

if they are performed or to be performed." By this revision, the criterion of nonperformance, the single standard set out by Congress, is eliminated from the Section altogether.

The upshot of these literal amendments is that the word "services" is qualified by reading "want or need" into the section and by reading "performance" out of the section. The short of the matter is that the result which the Company seeks can be obtained only if the sole test Congress has provided—nonperformance—is read out of the statute. Such a construction is patently untenable.

To justify so torturing the text of Section 8(b) (6), the Company has urged that the word "services" has an absolute dictionary definition, meaning work wanted or needed by the employer, and that the section must be construed to fulfill this meaning. But the dictionary does not give a certain meaning; among the definitions contained in standard dictionaries, some favor the Company's view, others the Board's and still others accord with neither.<sup>13</sup> To look to the dictionary is to look in vain. In any event, "it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary. . . ." Judge Learned Hand in *Cabell v. Markham*, 148 F.2d 737, 739 (C.A. 2). Moreover, even if the word "services" had an absolute dictionary meaning denoting work wanted or needed by the employer, it is clear

<sup>13</sup> *E.g.*, Webster's New International Dictionary (2d ed., unabridged); Webster's New World Dictionary of the American Language (Encyc. Ed., 1951); Allen's Synonyms and Antonyms (edited by T. H. Vail Motter, 1938).

that it has no such absolute legal meaning. As the court below had occasion to state in an earlier case, the word "services" is not restricted to the situation "when some physical or mental effort is expended by the employee on behalf of the employer" (*Nierotko v. Social Security Board*, 149 F. 2d 273, 276), and in affirmance this Court similarly rejected the view that "services" "can be only productive activity" (*Social Security Board v. Nierotko*, 327 U.S. 358, 365). Instead, "services" as a legal term "has different meanings according to the sense in which it is used. And the sense in which it is used must be determined from the context."<sup>14</sup> Looking to the context, we shall show that Congress in its deliberations used "services" as synonymous with work, and that in employing the phrase "for services which are not performed or not to be performed," Congress meant to require only that work be done.

**B. The Legislative History of Section 8(b)(6) Confirms the View That the Performance of Work is the Sole Criterion**

The legislative history of Section 8 (b) (6) of the Act, like its text, shows clearly that a union's attempt to secure the employment of its members for the performance of actual work is not forbidden whether or not the employer maintains that he wants or needs the work.

Section 8 (b) (6) originated in the House version

<sup>14</sup> *State ex rel. King v. Board of Trustees*, 192 Mo. A. 583, 588, 184 S.W. 929.

of the bill which became the amended act.<sup>15</sup> Sponsored by Congressman Hartley, it embodied a comprehensive antifeatherbedding program, derived in large measure from the Lea Act (60 Stat. 89, 47 U. S. C. 506), prohibiting certain featherbedding practices in the radio broadcasting industry.<sup>16</sup> Section 12 (a) (3) (B) of the House Bill outlawed union activity directed toward compelling employer accession to any of five specified featherbedding practices, defined in Section 2 (17) as follows:

The term "featherbedding practice" means a practice which has as its purpose or effect requiring, an employer—

(A) to employ or agree to employ any person or persons in excess of the number of employees reasonably required by such employer to perform actual services; or

(B) to pay or give or agree to pay or give

<sup>15</sup> H. R. 3020, 80th Cong., 1st Sess., April 18, 1947, in 1 Leg. Hist. 158. "Leg. Hist." refers to the two volume edition of the Legislative History of The Labor Management Relations Act, 1947 (Gov. Print. Off., 1948).

<sup>16</sup> Enacted by Congress the previous year, the Lea Act provides, in pertinent part, that it shall be unlawful to force a broadcaster:

"(1) to employ or agree to employ \* \* \* any person or persons in excess of the number of employees needed by such licensee to perform actual services; or

"(2) to pay or give or agree to pay or give any money or other thing of value in lieu of giving, or on account of failure to give, employment to any person or persons \* \* \* in excess of the number of employees needed by such licensee to perform actual services; or

"(3) to pay or agree to pay more than once for services performed \* \* \*; or

"(4) to pay or give or agree to pay or give any money or other thing of value for services \* \* \* which are not to be performed \* \* \*



any money or other thing of value in lieu of employing, or on account of failure to employ, any person or persons, in connection with the conduct of the business of an employer, in excess of the number of employees reasonably required by such employer to perform actual services; or

(C) to pay or agree to pay more than once for services performed; or

(D) to pay or give or agree to pay or give any money or other thing of value for services, in connection with the conduct of a business, which are not to be performed; or

(E) to pay or agree to pay any tax or exaction for the privilege of, or on account of, producing, preparing, manufacturing, selling, buying, renting, operating, using, or maintaining any article, machine, equipment, or materials; or to accede to or impose any restriction upon the production, preparation, manufacture, sale, purchase, rental, operation, use, or maintenance of the same, if such restriction is for the purpose of preventing or limiting the use of such article, machine, equipment, or materials.

Section 12(b) of the House bill conferred on any person injured by a featherbedding practice the right to sue the offender in a federal district court to "recover the damages sustained by him" as a result of the practice. Section 12 (d) subjected the offender "to deprivation of rights" under the Nation Labor Relations Act.

The House report accompanying this proposed

legislation, which it described as "substantially less drastic than the Lea bill,"<sup>17</sup> attributed to the Lea Act the objectives of eliminating those practices whereby an employer is required "to hire people who do no work, to pay for people the employers do not hire, and to hire more people than the employers have work for." H. Rep. No. 245, 80th Cong., 1st Sess., 25, in 1 Leg. Hist. 316. No greater objectives can therefore be ascribed to the House bill. As we shall see, during its legislative evolution only the objective of eliminating compelled payment to "people who do not work" survived.

The Senate version of the bill which became the amended act contained no regulation of featherbedding.<sup>18</sup> To resolve the wide divergence between the House and the Senate on the subject of featherbedding, this difference, among others, was referred to Conference.

The conferees "were of the opinion that general legislation on the subject of featherbedding was not warranted" (93 Cong. Rec. 6443, in 2 Leg. Hist. 1540). Except for the retention of clause (D) of the House bill banning payment for unperformed services (*supra*, p. 35), which ultimately became Section 8 (b)(6) in its present form, the House

<sup>17</sup> This description is presumably explained by the criminal sanctions provided in the Lea Act as distinct from the civil sanctions contained in the House bill.

<sup>18</sup> H. R. 3020, 80th Cong., 1st Sess., May 13, 1947, in 1 Leg. Hist. 226. H.R. 3020 was passed by the Senate in name only, for the bill was amended by substituting the language of S. 1126, 80th Cong., 1st Sess., April 17, 1947, in 1 Leg. Hist. 99, introduced by Senator Taft, for all provisions following the enacting clause. S. 1126 made no reference to featherbedding.

bill's regulation of featherbedding was scrapped *in toto*. Included in this deletion was the prohibition in clause (A) against requiring an employer to hire "persons in excess of the number of employees reasonably required by such employer to perform actual services" (*supra*, p. 34). Congress thus rejected a straightforward proposal to regulate unneeded employment.

There is no doubt that when Congress rejected the House bill's prohibition against unnecessary work it did so on the merits and not because it believed that the additional prohibition was mere surplusage. In his major address presenting the conference agreement to the Senate (Senator Taft explained the reason for the sharp curtailment of the House bill (93 Cong. Rec. 6441, 2 Leg. Hist. 1535) :

There is one further provision which may possibly be of interest, which was not in the Senate bill. The House had rather elaborate provisions prohibiting so-called featherbedding practices and making them unlawful labor practices. *The Senate conferees, while not approving of featherbedding practices, felt that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, and a determination of facts which it seemed to me would be almost impossible. So we declined to adopt the provisions which are now in the Petrillo Act [Lea Act]. After all,*

that statute applies to only one industry. Those provisions are now the subject of court procedure. Their constitutionality has been questioned.<sup>19</sup> *We thought that probably we had better wait and see what happened, in any event, even though we are in favor of prohibiting all featherbedding practices. However, we did accept one provision which makes it an unlawful labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine \* \* \*. [Emphasis supplied.]*

Senator Taft's written statement submitted contemporaneously reiterated the limited reach of Section 8 (b) (6) (93 Cong. Rec. 6443, in 2 Leg. Hist. 1540):

Section 8 (b) (6) of the conference agreement covers a matter with which the House bill dealt extensively under the topic of featherbedding practices. \* \* \* While the Senate conferees were in sympathy with the objectives of this portion of the House bill, it seemed to them that *it was almost impossible for courts to determine the exact number of men required in hundreds of industries and all kinds of functions.* The provisions in the Lea Act from which the House language was taken are now awaiting determination by the Supreme Court, partly because of the problem arising from the term "in excess of the number of employees reasonably required." Therefore, *the con-*

<sup>19</sup> This was a reference to the litigation culminating in *United States v. Petrillo*, 332 U.S. 1.



*ferrees were of the opinion that general legislation on the subject of featherbedding was not warranted at least until the joint study committee proposed by this bill could give full consideration to the matter.* Since the matter of exacting money for services not to be performed borders definitely on extortion, the conferees agreed to the insertion of a paragraph (sec. 8 (b) (6)) which makes it an unfair labor practice to cause or attempt to cause employers to pay money under such circumstances. [Emphasis supplied.]

The route which Congress travelled to arrive at Section 8 (b) (6) in its present form could not be more clearly marked. (1) The conferees "felt that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, and a determination of facts which it seemed . . . would be almost impossible"; (2) "the conferees were of the opinion that general legislation on the subject of featherbedding was not warranted at least until the joint study committee proposed by this bill could give full consideration to the matter"; (3) pending such full study, the conferees were willing to go no further than to make it "an unlawful labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine . . ." Accordingly, except for the "fairly clear case, easy to determine," where a

union "accept [s] money for people who do not work," Congress deliberately withheld all regulation of featherbedding. "Thus, the legislative history makes it clear that labor unions remain free to press for make-work devices and to oppose the introduction of labor-saving machinery, but that it would be an unfair labor practice to introduce stand-by arrangements or otherwise secure payments for which no work at all is required." Cox, *Some Aspects of The Labor Management Relations Act, 1947*, 61 Harv. L. Rev. 274, 289-290 (1948).

Nevertheless, the court below expanded the scope of Section 8 (b) (6) to include unwanted or unneeded work within its ban. In support of this enlargement, the court relied on a remark made by Senator Taft, which, in the court's view, illuminates its "dominant purpose" (R. 398). This remark is (93 Cong. Rec. 6446, in 2 Leg. Hist. 1545):

It is intended to make it an unfair labor practice for a man to say, "You must have 10 musicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway." That is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept.

Only by ignoring the place of this statement in the context of the debate can it have the free-wheeling meaning which the court below imputes to it. After Senator Taft had made clear that the only forbidden demand was for "money for people who do not work," Senator Pepper ex-

pressed fear that such practices as call-in pay and paid rest periods would be banned, because each involves "a demand that payment be made for time when actually no work was performed" (93. Cong. Rec. 6446, in 2 Leg. Hist. 1545). Endeavoring to reassure his colleague of the continued validity of such payments, Senator Taft used the quoted example to illustrate the difference; both situations presupposed that no actual work was done, but Senator Pepper's example, unlike the lack of work depicted by Senator Taft's example, typified the kind of lack of work which was not outlawed because payment for it was not "in the nature of an exaction." That Senator Taft was referring only to payment to men who did not work may be discerned even if his example be taken in isolation from the debate. Thus, despite the fact that there was no "room" for the four musicians to play, and therefore they could not actually work, the employer "must pay for the other 4 anyway." Considered in the context of the debate—which showed (1) that the ban against causing the employment of unnecessary workers had already been rejected, (2) that only causing payment for not working was prohibited, and (3) that the colloquy between Senators Taft and Pepper was directed solely toward differentiating, in situations where concededly no work was performed, between legitimate and illegitimate bases for obtaining payment despite the failure to work—Senator Taft's example plainly presupposed that "the other 4" musicians would be paid for not working.

Any doubt is dispelled by later authoritative explanations. In an analysis of Section 8 (b) (6) which Senator Taft inserted in the Congressional Record, he referred to his debate with Senator Pepper, and explained that (93 Cong. Rec. 6859, in 2 Leg. Hist. 1623-24):<sup>20</sup>

All that [Section 8 (b) (6)] does is to make it an unfair labor practice to cause or attempt to cause employers to pay money in the nature of an exaction for services which are not performed or not to be performed. A number of Senators have contended that this means that union requests for payment to employees of wages for lunch and rest periods or for waiting periods when machinery is being repaired will be illegal. \* \* \* The use of the words "in the nature of an exaction" make it quite clear that what is prohibited is extortion by labor organizations or their agents *in lieu* of providing services which an employer does not want [Emphasis supplied.]

It is not procuring payment for *actual* work done which the employer "does not want" that is forbidden; it is compelling payment "in lieu" of performing unwanted work—the demand for money

<sup>20</sup> The importance of this statement was highlighted by Senator Taft (93 Cong. Rec. 6858, in 2 Leg. Hist. 1622: " \* \* \* in the course of the debate on the conference agreement on H. R. 3020 a number of arguments directed at specific provisions of the bill were made on the floor which were not justified by either the text of the bill or the background of statutes and decisions against which it was written. In addition, numerous completely erroneous statements were made with respect to the effect of certain portions of the bill. In order to make clear the legislative intent \* \* \* I consider it advisable to supplement [my] analysis to cover some additional subjects and to correct mistaken statements made on the floor."



in place of, not for, work—which is banned. This is confirmed by Senator Ball, one of the managers of the amendments in the Senate and a member of the conference committee which formulated Section 8 (b) (6). On the last day of debate in the Senate, shortly before the vote which overrode the President's veto was taken, Senator Ball explained Section 8 (b) (6) in these words (93 Cong. Rec. 7529, in 2 Leg. Hist. 1639):

There is not a word in [Section 8 (b) (6)] about "featherbedding". It says that it is an unfair practice for a union to force an employer *to pay for work which is not performed*. In the colloquy on this floor between the Senator from Florida [Pepper] and the Senator from Ohio [Taft], before the bill was passed, it was made abundantly clear that \* \* \* it applied only to situations, for instance, where the Musicians' Federation forces an employer to hire one orchestra and then to pay for another stand-by orchestra, *which does no work at all*. [Emphasis supplied.]

It is clear, therefore, that Section 8 (b) (6) was enacted by Congress with the understanding that it "makes it an unlawful labor practice for a union to accept money for people who do not work," that it prohibits exacting money "in lieu" of performing unwanted work, and that it applies "only to situations" in which an employer is forced to pay someone who "does not work at all." There is nothing to support the view that once it is shown that actual work is to be performed, there must still be a further inquiry into whether the work is

wanted or needed by the employer. Were such an additional inquiry contemplated, at the least Congress would have retained so much of the House bill as forbade compelling the employment of more persons than reasonably required, which would be a minimum criterion for judging the need for work. But Congress studiously avoided this requirement. It felt that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, and a determination of facts which it seemed \* \* \* would be almost impossible" (*supra*, p. 37).

To interpolate a criterion of need into Section 8 (b) (6), despite Congress' refusal to regulate the number of employees necessary to do a job, is to adopt a standard rejected by Congress. Once it is recognized that Congress refused to reach the question of the number of employees reasonably required, there is no other test which can be devised in terms of the usefulness of work or its economic profitability to the employer which does not raise the same objections which caused Congress to reject regulation of the number of workers. It is just as difficult to determine whether a disputed class of work is beneficial as it is to determine how many employees are necessary to perform a concededly useful class of work (*infra*, pp. 51-53). In this very case, for example, it is not at all clear that, in terms of economic utility or aesthetics, the work which the Union offered to do, some of which

it had done in the past (*supra*, p. 3), has no value (*infra*, pp. 49-51). From the employer's standpoint there is no greater detriment to him in being required to employ ten men to do the work of five than to hire five men to do work which he considers useless. The concept of "services" under the Act does not turn on advantage to the employer; the test is simply whether the union is in good faith offering to perform work for money or whether it is insisting on payment for performing no work. To look to whether the work is worthwhile from the employer's standpoint is to go beyond the simple statutory test whether the work is done or is to be done, and to mire the statute in all the difficulties which caused Congress to withhold all regulation of featherbedding except to require work.

Since the enactment of Section 8 (b) (6), Congress has not repudiated the Board's reading of its purpose. Indeed, in the 81st Congress, Senator Taft introduced (S. 249, 81st Cong., 1st Sess., in 95 Cong. Rec. 8506-8513), and the Senate passed (95 Cong. Rec. 8716-8717), a bill amending the Taft-Hartley Act which omitted Section 8 (b) (6). Senator Taft explained that: "The *limited* restriction on featherbedding is eliminated. Section 8 (b) (6)" (95 Cong. Rec. 5590, emphasis supplied). Had Section 8 (b) (6) regulated employment in terms of the employer's want or need for the work, it could hardly be described as a "*limited* restriction." And the proposal to eliminate Section 8 (b) (6) altogether indicates at the least the tentativeness and circumscription of Congress' original

approach to regulating featherbedding.<sup>21</sup> It evidences that the Board's interpretation is a faithful reading of Congress' carefully constricted purpose.<sup>22</sup>

The upshot of the matter, therefore, is perhaps best summarized by Senator Taft and Congressman Hartley, cosponsors of the amendments to the Act. In the foreword to Congressman Hartley's book "*Our New National Labor Policy*" (1948), Senator Taft prefaced a reiteration of his views concerning the limited scope of Section 8(b)(6) as follows: "There is a suggestion in Mr. Hartley's book that various desirable changes were omitted from the Senate bill simply to get enough votes to pass the bill over the President's veto. Of course, this was a consideration, but fundamentally the differences with the House were brought about by differences of principle" (p. xi). "The Senate Committee felt that our job was one of correcting inequalities in existing law, and that unless there was clearly a serious abuse to be remedied we had better not go too far into *experimental* fields" (p. xii, emphasis supplied). After citing several other examples to illustrate the differing philosophies of the House and Senate, Senator Taft continued: "So also, the

<sup>21</sup> As shown (*supra*, p. 38-39), part of the reason assigned by Congress for withholding extensive regulation of featherbedding was to permit further study of the problem by the Joint Committee created by Section 401 of the Act. The ensuing report of that committee merely counseled further study. S. Rep. No. 986, 80th Cong., 2d Sess., Pt. 3, pp. 58-61.

<sup>22</sup> Cf., *National Labor Relations Board v. Wittse*, 188 F. 2d 917, 923 (C.A. 6), certiorari denied *sub nom.*, *Ann Arbor Press, Inc. v. National Labor Relations Board*, 342 U.S. 859; *ANPA v. National Labor Relations Board*, 193 F. 2d 782, 800 (C.A. 7), certiorari denied on this question, October 13, 1952.



attempt to prohibit featherbedding requires an elaborate Federal investigation of conditions in each industry and the exercise by the government of an expert opinion of the number of men required to do each job. *The extreme case of paying men for doing nothing, made an unfair labor practice by the new law, can be more easily dealt with, but there are literally thousands of borderline cases different in every industry which will require a vast extension of government regulation of labor and industry*" (p. xiii). [Emphasis supplied.] Congressman Hartley in the text of his book agreed with Senator Taft that Section 8(b)(6) dealt only with "paying men for doing nothing." He specifically recognized that it does not cope with the situation in which an employer is required to "hire more men than are needed" (p. 183), or in which make-work practices are carried "beyond a point which can be economically justified" (p. 182). He therefore recommended that Section 8(b)(6) be amended so as to provide "more effective provisions against featherbedding practices" (p. 174). Thus far Congress has not seen fit to adopt Congressman Hartley's recommendations.

When the court below stated, referring to Senator Taft's example that there is no "room" for the four musicians to play (*supra*, p. 40), that the analogy between it and the present case "falls barely short of perfection and reaches it if we substitute 'need' for 'room'" (R. 398), it indulged in the same basic alteration of the legislative history of Section 8(b)(6) as it had of the text. Indeed, in the court below the Company disclaimed the

meaning which the Court attributed to Senator Taft's example. The Company stated that, "frankly, it appears to have been a momentary lapse on the Senator's part into the broader language of the Lea Act, to have been made in the heat of debate, and to be inconsistent with the true meaning of 'in the nature of an exaction' as used in the statute. . . ." (Reply brief, p. 6). We believe it is unnecessary to explain away Senator Taft's statement in this fashion, but, if the statement does have overtones inconsistent with the text of Section 8(b)(6) and the remainder of its legislative history, we believe that the Company has hit closer to the mark than the court. To suppose that Congress utilized Senator Taft's example as the route by which to incorporate a meaning into Section 8(b)(6) which it does not otherwise bear is "to bring into question the candor of Congress as well as the integrity of the interpretative process."<sup>23</sup>

**C. Were the Employer's Want or Need for Work Pertinent, it Would be Necessary in Each Case to Ascertain Whether This Criterion Had Been Met; But Congress Intended Neither for the Board to Decide the Question Nor for the Employer's Unilateral Determination to Control; This Criterion is Therefore Obviously Irrelevant**

While holding that the employer's want or need for work is pertinent, the court below failed to

<sup>23</sup> *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, 508.

address itself to the irreconcilable dilemma which its interpretation of Section 8(b)(6) creates and which conclusively shows its error. If the employer's want or need for work is relevant, a decision of this question would be required in every case. It would be necessary either (1) to have the Board decide whether the work is desired or required, or (2) to permit the employer's unilateral determination to prevail. Neither alternative was acceptable to Congress. It therefore necessarily rejected any criterion of want or need, for it found no satisfactory means of resolving the issue.

The dilemma is vividly illustrated by the contrasting positions of the Company and the Union in this case. The Union sought actual work in two main categories, (1) the playing of overtures, intermissions, and "chasers" (*supra*, pp. 4, 6), and (2) in several variations as to circumstances, the providing of musical accompaniment to vaudeville acts (*supra*, pp. 6, 8-9). In the court below the Company did not challenge the usefulness of musical accompaniment to vaudeville acts, dismissing this class of work with the wholly unsupportable assertion that the Union "was not primarily interested in it" (Br. below, p. 30).<sup>24</sup> Concentrating solely on the Union's offer to play intermissions, overtures, and "chasers," the Company asserted that this

<sup>24</sup> Throughout the negotiations beginning in 1949, the Union continuously offered to play musical accompaniment for vaudeville acts, and readily assented to a contract on this basis proposed by the local management of the theatre, an arrangement which did not go into effect because it was vetoed by the Company's New York office (*supra*, pp. 6, 8-9). Obviously the Union was "interested" in this class of work.

class of work entailed no element of "constructive labor" (Br. below, p. 23), specifying "that the employer had no use for such intermissions or overtures, that they had been of no service to him, that they had no entertainment value, that they would not help to draw an audience and that they represented in fact a continuing interference in the operation of the theater" (Br. below, pp. 27-28). The Company concluded, therefore, that no "service" was to be performed because this work had no "utility, benefit, or desirability" (Br. below, p. 21), adding the flourishes that it was "unjustified" (Br. below, p. 32), it was an "insignificant and unwanted act" (Br. below, p. 33), and its unreasonableness merges into preposterousness" (Br. below, p. 32).

On the other hand, in an offer of proof rejected by the trial examiner, the Union took square issue with the Company's position on overtures, intermissions, and "chasers," offering at the hearing to prove that the "practice is economic" (R. 170), specifying that (R. 168-169):

\* \* \* the witness, if allowed to testify, would state that the Cleveland Palace Theatre does employ local musicians on such occasions as a travelling band plays at such theatre.

\* \* \* \* \*

The witness, if allowed to answer, would further state that on such occasions, the local orchestra plays an overture, during inter-



mission, and after the performance by the travelling orchestra.

\* \* \* \* \*

The witness further, if permitted to testify along this line, would testify that the practice of employment of local musicians at the same time as a travelling orchestra plays in theatres is not uncommon in the entertainment industry.

It is thus evident that in virtually every case where a union's offer to work is rejected by an employer as unwanted or unneeded the worth of the work emerges as an issue to be resolved. The means by which to resolve such an issue presents so vexing a problem that it may itself be more fraught with danger than any abuse it may be designed to correct. As explained by an eminent economist (Slichter, *Union Policies And Industrial Management*, p. 199 (1941)):<sup>25</sup>

<sup>25</sup> See also, *id.* at 165-166. And see, Randle, *Restrictive Practices of Unionism*, 15 So. Eco. Jour. 171, 181-182 (1948);

"In the case of restrictive labor policies, it is a great deal easier to diagnose than propose a remedy. \* \* \* There does not appear to be any statutory method by which to describe the practices which are undesirable without at the same time prohibiting contractual provisions which are desirable and necessary. Any attempt to do so would bog down in sheer administrative unworkability. A different rule would have to be made for each case, and each decision might depend upon exceedingly technical and complex facts. The only direct method of public control would be some scheme which would provide for government dictation of nearly all the nonwage provisions of every collective bargaining agreement. But in addition, the government, to expose the "oral agreement" phase of restrictive practices, would need a Federal Bureau of Investigation whose size would create a sizable

If a union is charged with requiring the employment of an unnecessarily large crew on a machine or unreasonably limiting the number of pieces that a man may produce or the number of machines that he may run, how can "reasonableness" be determined? If a union were charged with forcing the employment of an excessive number of men on a new printing press, the court would have to decide the technical question of how many men the press really requires. This number will differ for the same press in different press rooms or under different working conditions. Likewise, the courts might be compelled to decide how many looms a weaver should operate (and the number would differ with a multitude of conditions, such as the nature of the work, the nature of the machines, the kind and amount of help provided), what is a reasonable sling load under different conditions in loading and unloading ships, what are reasonable limits on the daily output of workmen in hundreds of occupations. The public policy of seeking to regulate such technical matters by law is open to grave doubts. These doubts are increased by the fact that there is a possibility of regulating

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dent in the national budget. Then there remains the question of how you would visit judicial displeasure upon the culprits. To levy fines would be one sure way to lower morale and raise antagonisms which would be immediately reflected in productivity. The other alternative of jailing the culprits would stop all production. It seems obvious that legislative efforts would present an enforcement conundrum to which no one has an adequate answer."

them through the bargaining power of employers.

Impressed by these "grave doubts," Congress found no feasible means to decide the employer's want or need for work. It refused to have that question resolved by either the Board or the employer, and the deliberate absence of a means of deciding this issue, vital to the holding below, necessarily demonstrates its irrelevance.

1. *Congress expressly formulated Section 8 (b) (6) to avoid conferring on the Board the function of deciding disputes as to the want or need for work.*

To confer on the Board the function of deciding whether work is wanted or needed by an employer, where a union seeks actual employment for its members, is to cast the Board in the very role which Congress refused to assign it. As shown (*supra*, pp. 36-37), Congress deleted from the House bill the prohibition against seeking employment in numbers larger than "reasonably required." As Senator Taft explained (*supra*, p. 37), the conferees "felt that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, [and in "all kinds of functions" (*supra*, p. 38).] and a determination of facts which it seemed \* \* \* would be almost impossible." Thus the impossibility of

administering even a "reasonably required" standard led to its deletion. To require the Board, nevertheless, to decide whether an employer wants or needs work is to vest it with the power Congress chose to withhold.

Furthermore, if administration by the Board of a "reasonably required" standard is "impracticable" and "almost impossible," how much more so are the elusive and epithetic standards the Company proposes to substitute, such as "unreasonableness" merging into "preposterousness," "unjustified," "insignificant and unwanted," without "utility, benefit, or desirability" (*supra*, p. 50). These are not the standards stated in Section 8 (b) (6); they exceed in latitude any curb on featherbedding which any proponent in Congress ever proposed; and they infinitely multiply the mischief in administration which led Congress to reject the much more explicit "reasonably required" test. To inject the Board into this area would indeed be, contrary to the will of Congress, to have the Board "sit in judgment upon the substantive terms of collective bargaining agreements." *National Labor Relations Board v. American National Insurance Co.*, 343 U. S. 395, 404.

*2. The employer's unilateral determination of the want or need for work does not control.*

Under the general scheme of the National Labor Relations Act, the only alternative to having the Board decide whether the employer wants or needs



work is to permit the employer's unilateral determination of this issue to control. So to do "would be to accept the employers' requirements, no matter how harsh and extreme, as the proper standard."<sup>26</sup> This alternative was no less unacceptable to Congress.

The conferees, in their consideration of the wise scope of featherbedding regulation, presupposed that the Board and not the employer would decide the question of need if legislation were to extend that far (*supra*, pp. 37-39). Otherwise there would have been no purpose to their discussion of the infeasibility of governmental determination of need for employment. Furthermore, the report accompanying the House bill, which forbade unneeded employment, clearly implied that an employer's need for workers was to be determined, not by the employer himself, but by an impartial application of objective standards (H. Rep. No. 245, 80th Cong., 1st Sess., 25, in 1 Leg. Hist. 316):

In the case of \* \* \* paragraph (A), in every industry standards exist and are applied daily to determine how many employees are "reasonably required" to perform given tasks.

\* \* \* When any question arises as to whether or not a union demands more people than are "reasonably required" to do certain work, industrial engineers and time-study people

<sup>26</sup> Slichter, *Union Policies and Industrial Management*, p. 166 (1941).

can, and constantly do, resolve the question by reliable, scientific methods.

In addition, reference to the Lea Act "from which the House language was taken" (93 Cong. Rec. 6443, in 2 Leg. Hist. 1540), conclusively establishes that it was never proposed that the employer's own view of his want or need for work should be decisive. Paragraph (1) of the Lea Act parallels paragraph (A) of the House bill, with the exception that reference is there made to "the number of employees needed" rather than those "reasonably required" (*supra*, p. 34, n. 16). The employer's statement of his "wants" or desires for work under the "need" test of the Lea Act, plays no part in determining the legality of a request for employment,<sup>27</sup> and it was settled by this Court

<sup>27</sup> The Lea Act was specifically amended on the floor of the House to achieve this result. As originally reported to the House by the Committee on Interstate and Foreign Commerce, paragraph (a) (1) made it unlawful to coerce a radio licensee "to employ \* \* \* persons in excess of the number of employees *wanted* by such licensee." [Emphasis supplied.] This provision was criticized on the ground that it would permit an employer to overburden his employees and prevent them from seeking to induce him to lighten their burdens by increasing the size of the working force (92 Cong. Rec. 1546). Subsequently, Representative Holifield offered an amendment which would strike the words "wanted by such licensee," and substitute "needed by such licensee to perform actual services" (92 Cong. Rec. 1564). This amendment was passed by the House without debate and was later accepted by the Conference Committee. During the debate in the Senate on the Conference Report, Senator Johnson, in charge of the measure, stated flatly that it was not the radio station which determined the appropriate number of employees (92 Cong. Rec. 3245, 3256), reassuring the Senate as follows: "I think it should be said in connection with what the Senator from Vermont has already so well stated, that while the bill was being con-

that "an employer's statements as to the number of employees 'needed' is not conclusive as to that question," but it must be determined by a jury on the basis of "many factors." *United States v. Petrillo*, 332 U.S. 1, 6, 7. <sup>28</sup> It is at the least clear that Section 8 (b) (6) was never intended to exceed the Lea Act in the stringency of its control over a union's demand for employment; since the em-

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sidered in the House the word was changed from employee 'wanted' to employees 'needed'. That is a very important change. But that change was made, and the conference report and the measure now contain the word employees that are 'needed'; not employees that are wanted, but employees that are needed." (92 Cong. Rec. 3245).

<sup>28</sup> The constitutionality of paragraph (f) of the Lea Act was upheld by this Court against the charge that the words "number of employees needed by such licensee" was so vague, indefinite, and uncertain as to violate the due process clause of the Fifth Amendment. The District Court, from whose decision appeal was taken, had held that portion of the Lea Act unconstitutional for the reason that "There is no means, or guide, or standard by which the defendant may know 'the number of employees needed.' This is established by the licensee without prior knowledge upon the part of the person subjected to prosecution for violation of the section." *United States v. Petrillo*, 68 F. Supp. 835, 848 (N. D. Ill.) In reversing the lower court, this Court made it clear that the "number of employees needed" was to be determined judicially, rather than by individual employers, as the following excerpt from the opinion indicates: "Of course, as respondent points out, there are many factors that might be considered in determining how many employees are needed on a job. But the same thing may be said about most questions which must be submitted to a fact-finding tribunal in order to enforce statutes. Certainly, *an employer's statements as to the number of employees 'needed' is not conclusive as to that question.* It, like the alleged wilfulness of a defendant, must be decided in the light of all the evidence. \* \* \*. the language Congress used provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of Congress." *United States v. Petrillo*, 332 U.S. at 6 and 7. [Emphasis supplied.]

employer's unilateral determination does not control under the Lea Act, it cannot so control under Section 8 (b) (6). Finally, it is offensive to the underlying spirit of the Act to say that, in a dispute between an employer and a union over the want or need for work, an employer may illegalize the union's demand merely by rejecting it, for the Act normally withholds from either party the force of governmental support of their substantive bargaining positions. *National Labor Relations Board v. American National Insurance Co.*, 343 U. S. 395, 401-404.

Accordingly, since Congress withheld both from the Board and the employer the power to decide the issue, the employer's want or need for work is necessarily irrelevant in determining the legality of a union's request for employment.

**D. By Its Interpretation of Section 8(b)(6) the Court Below Has Substituted Its Conception of the Public Policy Pertinent to Featherbedding for That of the Congress**

To support its interpretation of Section 8(b)(6), the court below states that to make the application of Section 8(b)(6) turn on the distinction between working and not working is "to ascribe to Congress a purpose to condemn certain practices in labor relations and at the same time to use a form of expression that permits escape from its condemnation" (R. 398). But the difference between receiving payment for working and payment for not working is more than a matter of mere syntax. *United States v. Local 807*, 315 U.S. 521, 534. Congress



regulated featherbedding practices to the extent of requiring that work be performed, but it left to the process of bargaining the determination whether the employer should accede to a demand for work and the manner in which work should be done to yield the employer the greatest benefit. There has been no other change from the policy whereby Congress has placed its faith in "the bargaining power of employers" to regulate featherbedding. Slichter, *Union Policies and Industrial Management*, p. 199 (1941).

The reform which Congress effectuated is illustrated by this case. In obedience to the command of Section 8(b)(6), the Union abandoned its earlier practice of securing the payment of employees although no work was done by them (*supra*, p. 4). The evil corrected was the elimination of this practice. The Union now seeks payment only in exchange for actual work done. According to counsel for the Union (*supra*, p. 9), as a result of negotiations on this basis, an agreement has been reached between the Company and the Union for the actual employment of local musicians on half of the total of stage presentations booked by the theater each year. But whether or not such an agreement has materialized, what is pertinent is that bargaining now proceeds on the basis of the actual performance of work, and this is the reform which Congress instituted.

To interpret Section 8(b)(6) as directed only at requiring work does not, as the court below seems to imply, permit easy evasion of the statute's actual prohibition against obtaining payment for *not*

working. A union's mere statement that it proposes to perform work is not conclusive of the *bona fides* of its offer. Like every other question of fact, whether the union is actually in good faith offering to perform work must be evaluated in the light of all the circumstances. Whatever a union's professions may be as to its desire to secure actual employment, "the inquiry must nevertheless be directed to whether . . . [it] honestly intended to obtain a chance to work for a wage." *United States v. Local 807*, 315 U. S. 521, 534. In this case, the Board found, after assessing all the evidence, that the Union did honestly intend to perform the work it sought, and this finding was not disturbed by the court below. As we have shown, (*supra*, pp. 18-26), this finding is supported by substantial evidence on the record considered as a whole.

By requiring only that work be performed, and not extending its prohibition against unwanted or unneeded work as well, Congress approached the subject of featherbedding regulation mindful of the difficulty of the problem and the division of opinion concerning its attributes and solution. At the root of featherbedding is the unemployment resulting from technological innovation.<sup>29</sup> From

<sup>29</sup> See *Digest of Material on Technological Changes, Productivity of Labor, and Labor Displacement*, 35 Monthly Lab. Rev. 1031 (1932). As to the effect of technological change upon the employment of musicians, see, *Effects of Technological Changes Upon Employment in the Amusement Industry*, 33 Monthly Lab. Rev. 261 (1931); *Effects of Technological Changes Upon Employment in the Motion-Picture Theaters of Washington, D. C.*, 33 Monthly Lab. Rev. 1005 (1931).

the time that mass-production machinery was first introduced,<sup>30</sup> those adversely affected have resisted displacement, protesting its privation,<sup>31</sup> while those profiting from it have defended it as advancing progress. This conflict between security and change has evoked much controversial discussion but no pat or ready bases have been found either for reconciling the competing interests or for preferring the one to the other. As stated in the introduction to an exhaustive study (TNEC Monograph 22, *Technology In Our Economy*, p. 3 (1941)):<sup>32</sup>

It is now more than a decade and a half since the phrase "technological unemployment" was coined in the United States. In its first coinage the phrase was meant to convey the idea that technical progress was a factor in decreasing employment and that society was being confronted more and more with the problem of "machines versus men." In the 15 years since the phrase became common cur-

<sup>30</sup> Towards the end of 1811 the Luddites, English handcraftsmen displaced by the introduction of textile machinery, destroyed stocking and lace frames as a measure of resistance. 14 Ency. Brit. 468 (1948). See Toller, *The Machine Wreckers* (Knopf, 1923), and also Lord Byron's eloquent speech in defense of the Luddites in the House of Lords on the second reading of the Frame-Work Bill (*id.*, at pp. 105-113).

<sup>31</sup> Of course, resistance to displacement by the adoption of restrictive tactics is not confined to workers, but extends to every group in society whose stake is threatened by a change. Randle, *Restrictive Practices of Unionism*, 15 So. Eco. Jour. 171, 178 (1948):

<sup>32</sup> See also, Slichter, *Union Policies and Industrial Management*, pp. 164-281 (1941); Randle, *Restrictive Practices of Unionism*, 15 So. Eco. Jour. 171 (1948); *Technology*, 14 Ency. Soc. Sc. 553, 557 (1934); *Unemployment*, 15 Ency. Soc. Sc. 147, 153, 157-158 (1934).

rency in this popular sense, an almost incessant debate—sometimes more and sometimes less heated—has been going on as to what the phrase really meant; whether what it meant to denote was a fact or a “mere figment of the imagination”; if a real fact, how serious was it for national welfare and what could or should be done about it. What has been said on both sides of the question is registered in an extensive literature—in the technical discussions of the American statistical and economic associations, in numerous articles in the more or less popular magazines, in editorials in the trade press, in voluminous reports and studies of private research agencies and governmental bureaus, and in the elaborate depositions and statements made in public hearings held by congressional committees and by other official or semiofficial bodies.

It cannot be said that this rather prolonged debate has settled the main issue raised. Today, as a decade ago, opinion in the United States is still divided between the opposing views that may be held on the subject. On the one hand, it is still claimed by some that the factor which is of special significance in making the problem of unemployment what it is today is that of technology. Not only the number of the unemployed, but their distribution by occupations, the duration of their unemployment, and their chances for being re-employed are presumably influenced in large measure, if not primarily, by the technological changes which have been taking place during



the past two decades and which promise to continue in the discernible future. On the other hand, there are those in this country as well as abroad who either deny the existence of technological unemployment entirely or regard it as of minor importance. To many of these the very term is a misnomer whose use merely tends to confuse the real issues.

This division of opinion, which is as old as the problem itself, would seem to point to underlying differences in general economic views which cannot seemingly be bridged.

Faced with this unreconciled underlying antagonism of interests, Congress was not yet prepared to throw the force of governmental support to either side in the dispute, and therefore, except for requiring that work be performed, Congress withheld all regulation of featherbedding. Hence, for the court below to say that the same vice may arise from the unregulated as from the regulated area is to ignore the point at which Congress chose to stop. Congress fully appreciated the distinction between stand-by and make-work practices in featherbedding. Stand-by practices require payment where no work is done. These Section 8 (b)(6) forbids. Make-work practices concern payment for actual work which the employer considers of no value. These Section 8 (b)(6) does not reach.

The failure of the court below to appreciate Congress' circumspect approach to featherbedding underlies and annuls another justification ad-

vanced by it to support its interpretation of Section 8 (b) (6): It asserts that, while the result of its interpretation is that "the field of activity for a small orchestra may be somewhat curtailed," "at the same time the market for the services of much larger musical organizations is greatly enhanced" (R. 398). This is an irrelevant consideration, even if it were correct. The membership of the American Federation of Musicians is composed of musicians playing for both small and large orchestras and the policy it adopts presumably represents its considered accommodation of the interests of both, reached and embraced by both. Neither the Board nor the courts can presume to know the best interests of different groups within a union better than they know them themselves. Nor have the Board or the courts been assigned to mediate the conflicting interests within or between the ranks of management and labor. On the contrary, it was precisely because Congress was unwilling to have governmental intercession in such disputes that it withheld regulation of featherbedding except to require that work be done.

Finally, it may be suggested, as did the dissenting member of the Board, that while Section 8 (b) (6) does not reach unwanted or unneeded work when the work is done by employees already in the employer's hire, it does prohibit unwanted or unneeded work where its performance is sought by workers who are not presently on the employer's payroll (R. 382-383). But just as Section 8 (b) (6) draws no distinction between work already

performed and work to be performed (*supra*, p. 28). Section 8 (b)(6) draws no distinction between the work demands of present and prospective employees. Its text treats an existing and a future employment relationship in identical fashion, for it covers causing an employer "to . . . agree to pay . . . for services . . . not to be performed," which clearly reaches prospective employment and affords no basis for differentiating it from existing employment. Furthermore, as this Court has agreed, "'practically always the crux of a labor dispute is who shall get the job, and what the terms shall be. . . .'" *United States v. Local 807*, 315 U.S. 521, 531. This is especially true in many important industries, such as maritime, stevedoring, and the building and constructing trades, where employers ordinarily do not have a fixed work force but recruit employees as required on a particular job. Had Congress put this class of employment in a separate category from that in which a fairly permanent employment relationship is usual, a clear expression of such an intention most certainly would have appeared. No such expression is present. Certainly every reason deterring Congress from regulating unwanted or unneeded work in an existing employment relationship applies with equal force to prospective employment.

The same is true of the distinction which may conceivably be suggested between work of a kind which the employer has had done in the past and work of a new kind which a union may seek to have

the employer institute. The employer who wishes to abolish a preexisting class of work because he finds it unprofitable or useless is not protected by the statute against union demands that he continue to have it performed. An employer who for the same reasons does not desire to institute a new class of work is in no different position. Section 8 (b) (6) places a union under no greater disability in seeking to expand job opportunities which did not previously exist than it is in seeking to prevent curtailment of preexisting job opportunities. To secure future employment and to retain present employment remain legitimate union aims.

A union's attempt to institute a new class of work, as distinguished from retaining present employment, may be relevant to the factual question whether it in good faith intends to perform the work it proposes be adopted—but only to this question. It is solely in this connection, to test the *bona fides* of the union's offer, that it may be appropriate to inquire into the relationship of the proposed work to the employer's usual business. In this case, the Board was clearly warranted in concluding that the Union intended to perform the work it sought (*supra*, pp. 18-26). Indeed, the Union was not seeking the adoption of a new class of work it had never theretofore performed, but was seeking to reacquire a former class of work it had relinquished and now desired to resume (*supra*, pp. 3-6).

In any event, there is no need to reach on this record any number of hypothetical situations which



might be conjured up by *ad horrendum* arguments. Assuming that the touchstone of Section 8(b)(6) is the word "services," it is clear that whatever limitations might be placed upon that word *arguendo* they do not exclude work which is within the competence of the union to perform, is not precluded by the physical nature of the premises, and is within the general scope of the employer's business.

In sum, by its approach to the interpretation of Section 8(b)(6), the court below has overlooked a vital element of the legislative process. "Legislation is often tentative, beginning with the most obvious case, and not going beyond it, or to the full length of the principle upon which its acts must be justified." Mr. Justice Holmes in *Beard v. Boston*, 151 Mass. 96, 97, 23 N. E. 826, 827. It is this "cautious advance, step by step, and the distrust of generalities which sometimes have been the weakness, but often the strength, of English legislation." *Carroll v. Greenwich Insurance Co.*, 199 U.S. 401, 411. This approach is characteristic of the amendments to the Act. In "a matter of such bitter controversy as the Taft-Hartley Act, the product of careful legislative drafting and compromise beyond which its protagonists either way could not force the main body of legislators, the courts should proceed cautiously." *Rabouin v. National Labor Relations Board*, 195 F. 2d 906, 912 (C. A. 2). "Congress could have outlawed all so-called 'featherbedding' but apparently did not see fit to do so." *American Newspaper Publish-*

*ers Association v. National Labor Relations Board*,  
193 F. 2d 782, 801 (C. A. 7), certiorari granted,  
this Term, No. 53. To adopt the interpretation  
of the court below "would warp § 8(b)(6) into a  
broader provision than it was intended to be."  
*Rabouin v. National Labor Relations Board, supra.*

#### CONCLUSION

For the reasons stated it is respectfully sub-  
mitted that the decision below should be reversed  
and the case remanded with directions to affirm the  
order of the Board and deny the petition to review.

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1952.**

**No. 238.**

**NATIONAL LABOR RELATIONS BOARD,**

*Petitioner,*

**VS.**

**GAMBLE ENTERPRISES, INC.,**

*Respondent.*

**BRIEF OF RESPONDENT.**

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# In the Supreme Court of the United States

OCTOBER TERM, 1952.

**No. 238.**

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

VS.

GAMBLE ENTERPRISES, INC.,

*Respondent.*

## **BRIEF OF RESPONDENT.**

### **OPINIONS BELOW.**

The opinion of the National Labor Relations Board is reported at 92 N. L. R. B. 1528 (1951). The opinion of the Court of Appeals for the Sixth Circuit is reported at 196 F. 2d 61 (C. A. 6, 1952).

### **JURISDICTION.**

This Court has jurisdiction of this proceeding by reason of Title 29 United States Code § 160(e).

Certiorari was granted October 13, 1952.

### **QUESTIONS PRESENTED.**

Section 8(b)(6) of the National Labor Relations Act makes it an unfair labor practice for a union to cause or attempt to cause an employer to make or agree to make payments in the nature of an exaction for services which are not performed or not to be performed.

The question in this case is whether under the facts of this record the stand-by orchestra practices of the American Federation of Musicians, Local No. 24, violated this provision.

## STATUTES INVOLVED.

Section 8(b)(6) of the National Labor Relations Act is the only statutory provision put into question by this case. This Section reads:

"It shall be an unfair labor practice for a labor organization or its agents

\* \* \* \* \*

"to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed." (61 Stat. 140; 29 U. S. C. § 158(b)(6).)

## STATEMENT.

This is a labor law case.

It calls for application of the new anti-feather-bedding provision of the Taft-Hartley Act. Under this section Respondent employer filed an unfair labor practice charge against a union. Petitioner National Labor Relations Board, by a split decision, held that there had been no violation and dismissed the complaint. On review the Court of Appeals for the Sixth Circuit reversed, set aside the order of dismissal and remanded the cause to the Board. The Board seeks in this Court to overturn the decision of the Court of Appeals.

The facts are well established.\*

Respondent is the complainant employer, Gamble Enterprises, Inc., a Washington corporation operating a chain of theatres in several states. (R. 98-100; Ex. 2, R. 285.) Petitioner is the National Labor Relations Board. American Federation of Musicians, Local No. 24, of Akron, Ohio, was respondent in the proceedings before the Board

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\* Citations are to the printed certified record, abbreviated "R." and General Counsel's Exhibits reprinted therein abbreviated "Ex."



and an intervenor in Court of Appeals. These parties are referred to, respectively, as the employer, the Board and the union.

The issue concerns the operation of the employer's Palace Theatre in Akron, Ohio. The Palace has, since the decline of vaudeville, followed a policy of showing motion pictures with an occasional presentation on its stage of traveling "name" bands of national reputation. (R. 101, 103, 75, 79.) For many years prior to 1947 whenever such a name band was hired to play an engagement at the Palace the employer was required to pay full wages for an additional orchestra of nine local musicians. (R. 71, 72, 74; Ex. 5, R. 287.) This local orchestra held regular rehearsals at the Palace and held itself available to work. (R. 65, 69, 70, 71, 84.) But it seldom reported, and except on rare occasions it did not actually play. (R. 64, 67, 69.) It was what is known as a "stand-by" orchestra. (R. 73.) It stood by.

On June 23, 1947 the Labor Management Relations Act of 1947, embodying the Taft-Hartley amendments to the National Labor Relations Act, was enacted, effective August 22, 1947. (61 Stat. 136.) Among other things, the Taft-Hartley Act introduced into the National Labor Relations Act the following provision:

Section 8(b)(6):

"It shall be an unfair labor practice for a labor organization or its agents

"to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

The practice of paying stand-by musicians at the Palace stopped between the date this provision was en-

acted and the date it took effect. The last engagement for which payment was made for the stand-by orchestra was on July 2, 1947. (R. 97, 104; Ex. 5, R. 287.)

Between July 2, 1947 and November 12, 1947 the Palace Theatre played seven performances of traveling name bands on its stage without being required to pay local musicians to stand by. (R. 104.) Until late October the union made no objection and no demands for such stand-by employment. (R. 105.)

In October of 1947 the secretary and business manager of the union, one Mr. Teagle, called upon the employer's directing manager of the Palace, a Mr. Gamble. Teagle demanded that Gamble employ an orchestra of nine local musicians whenever a name band performed. It was Teagle's post-Taft-Hartley approach that these local musicians would not be hired to do nothing; they would play overtures and intermissions at the performances of the nationally known orchestras. (R. 105.)

Gamble made clear to Teagle what many years of experience had shown to be true in the operation of the Palace. The employer had had to pay off a stand-by orchestra of local musicians for many years. But the local orchestra was not needed. It was not wanted. It had no drawing power. It detracted from the name band's performance. It was a general interference in the operation of the Theatre. And consequently, though already paid for, it was almost never used. (R. 105.)

● Under these circumstances the employer refused Teagle's demand. (R. 107.)

Teagle continued to insist upon simultaneous appearance of a local orchestra with each name band, however, and barbed his demand with a warning. Traveling bands would not be permitted to appear at the Palace until an agreement on this issue had been reached with the union. (R. 106.)

Discretionary power to admit or exclude traveling bands lay in the hands of the local through Section 4 of Article 18 of the Constitution and By-Laws of the American Federation of Musicians:

"Section 4. Traveling members cannot, without the consent of a Local, play any presentation performances in its jurisdiction unless a local house orchestra is also employed." (R. 233, 374; Ex. 3, R. 393.)

At the time of these discussions the Palace had already scheduled the appearance on its stage on November 20, 1947, of a traveling orchestra known as the Ray Eberle Band. (R. 105.) On November 18, 1947, the agency through which the employer had booked the Ray Eberle Band received the following telegram from James C. Petrillo, President of the American Federation of Musicians, the national union.

"AS PER TELEPHONE CONVERSATION RAY EBERLY AND HIS ORCHESTRA CANNOT APPEAR AT THE PALACE THEATRE IN AKRON OHIO UNTIL THIS THEATRE HAS REACHED AN AGREEMENT WITH LOCAL 24 OF THE AMERICAN FEDERATION OF MUSICIANS." (R. 107; Ex. 13, R. 331.)

The Ray Eberle show did not fulfill its scheduled engagement at the Palace Theatre. (R. 107.)

No further meetings between Gamble and Teagle took place for over a year. (R. 108.) Nor did the Theatre book any traveling bands. Early in 1949, however, Gamble attempted to secure Teagle's consent to the booking of name bands with accompanying vaudeville acts without hiring local musicians simultaneously. (R. 109.) Teagle was adamant. Name bands could not be booked at the Palace Theatre unless local musicians were also hired.

On May 8, 1949, a meeting of representatives of the union and of Petitioner, was held at Teagle's office. (R.

110.) Various suggestions were made at this meeting. The offer to play overtures and intermissions was repeated. It was suggested that the local orchestra play music for vaudeville acts, not an integral part of the name bands' ensemble. (R. 111.) Again, a suggestion was offered that the local orchestra perform from the stage with miscellaneous vaudeville acts assembled by the employer, one such show to be required for each appearance of a name band. (R. 113, 114.) The Palace management maintained its position, however, that the local orchestra had no drawing power and that its performance in the pit simultaneously with a name band or its specialized performers not only would be lacking in entertainment value but would constitute an interference. A tentative arrangement between Gamble and Teagle was reached at this meeting, but the union's executive board did not take favorable action upon it. (R. 111, 115; Ex. 17, R. 336; Ex. 18, R. 337.)

On May 16th, 1949, the employer filed an unfair labor practice charge against the union. (Ex. 1-A, R. 1.)

On June 24, 1949, Gamble advised Teagle by letter that the Palace would resume its former practice of engaging traveling name bands. (Ex. 20, R. 338.)

On July 26, 1949, the Theatre management executed a contract for the appearance on August 18th of a name band, "Roy Acuff and His Grand Ole Opry" with certain accompanying acts. (R. 146.)

Gamble informed Teagle of this booking. (R. 52.) Teagle also received a phone call and a telegram from the manager of the Acuff show, inquiring whether the show would be permitted to fill its engagement at the Palace. Teagle replied that no agreement had been consummated between the union and the employer. (R. 51.)



In addition, the agent received the following letter from the President of the American Federation of Musicians, dated August 4, 1949:

"We have been advised that you contemplate booking Roy Acuff into a theatre in Akron, Ohio. The local there advises us that no agreement has been reached between the theatre and our local union.

"Under the circumstances, Federation members are not permitted to play there until negotiations for an agreement are consummated.

Very truly yours,

James C. Petrillo,

*President.*"

(R. 116; Ex. 22, R. 342.)

The Roy Acuff show did not fill its August 18th engagement at the Palace Theatre. (R. 116.).

Subsequent interchanges of letters between Gamble and Teagle yielded no agreement. A tentative two show arrangement discussed by Gamble and Teagle in December, 1949, was rejected by the employer in view of the imminence of hearings in this proceeding. (R. 118, 120.)

On November 16, 1949, the employer filed an amended charge against the union, charging it with engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 136. (Ex. 1-C, R. 4.) Specifically, the employer charged the union with an unfair labor practice under Section 8 (b) (6) of the Act. The General Counsel of the National Labor Relations Board issued a complaint against the union dated January 3, 1950, and hearings were duly held before a trial examiner on March 14, 15 and 16, 1950. (Ex. 1-E, R. 6.)

The trial examiner found that the employer was engaged in commerce within the meaning of the Act and recommended that the Board assert its jurisdiction. (R. 343 ff.) He further found that the union's acts constituted a violation of Section 8 (b) (6), but recommended that the complaint be dismissed, since, in his view, the employer had waived its rights by contract.

The Board was unanimous in its conclusion respecting the employer's engagement in commerce and asserted jurisdiction. (R. 370, 371.)

The majority of the Board, however, rejected the trial examiner's conclusion that the union's acts constituted an unfair labor practice under Section 8 (b) (6). It was the view of two Members of the Board that the union was primarily interested in securing bona fide employment for its members, that there was no evidence that the local musicians would not perform the offered services, that Section 8 (b) (6) is applicable only where the union members do absolutely nothing in exchange for payments, and that it is inapplicable if the labor organization performs any act at all, "even in situations where the employer does not want, does not need, and is not willing to accept such services." (R. 370, 378; 92 NLRB 1528, 1533.)

Member Reynolds dissented from this proposition. He further rejected the trial examiner's waiver theory and passed upon certain evidentiary issues which the majority had not found it necessary to consider in their view of the case. (R. 379.)

Pursuant to the decision of the majority of the Board, the complaint filed against the union was ordered dismissed. (R. 379.) Member Reynolds would have found the union guilty of unfair labor practices under Section 8 (b) (6).

The employer filed a petition for review and reversal in the Court of Appeals for the Sixth Circuit on May 17, 1951, naming the Board as respondent. (R. 386.) The union appeared as an intervenor. The Court of Appeals reversed the decision of the Board and held "the only reasonable inference to be drawn from undisputed facts" to be that the union's effort "to force the theatre to pay for services not needed and of detriment to it was clearly an exaction," that the acts sought to be done by the union were not practices normally incident to services required by the employer, and that therefore the union had violated Section 8 (b) (6). 196 F. 2d 61, 63 (C. A. 6, 1952). The Court set aside the dismissal of the employer's complaint and remanded the cause to the National Labor Relations Board for further proceedings.

The Board filed a petition for certiorari in this Court July 30, 1952. Certiorari was granted October 13, 1952 and argument assigned immediately following *American Newspaper Publishers Association v. N. L. R. B.*, Docket No. 53, another case raising issues under Section 8 (b) (6).

### SUMMARY OF ARGUMENT.

The facts in this case are that the local union excluded traveling name bands from the employer's theatre in an effort to exact payment for a local union orchestra which the employer did not want or need and which was indeed a detriment to the operation of the employer's theatre. Section 8 (b) (6) of the National Labor Relations Act expressly forbids attempts to cause an employer to make payments in the nature of an exaction for services which are not to be performed. A union cannot evade this provision by attempting to exact payment for the performance of acts which are neither services nor incidental to services and which the employer does not want, does not need and is not even willing to accept. This case is funda-

mentally different from the companion case with which it has been docketed in this Court, *American Newspaper Publishers Association v. N. L. R. B.*, Docket No. 53. It is clear that here the union has violated Section 8(b)(6) and that the normal operation of collective bargaining is in no way prejudiced by such a holding.

### ARGUMENT.

This is the first case arising under the anti-featherbedding provision of the Taft-Hartley Act to reach this Court. Unless it is affirmed, it will be the last.

It is quite clear, as will be developed in this brief, that no union will be so inept as to allow itself to stumble over Section 8 (b) (6) as that Section has been interpreted by the Board in the present case. It will never be beyond the ingenuity of the union bargaining representative to recite some act of omission or commission for which payments will be demanded even though the act is not wanted by the employer, is not necessary, is of no service and is in fact a hindrance to him.

Section 8 (b) (6) of the National Labor Relations Act reads:

"It shall be an unfair labor practice for a labor organization or its agents

\* \* \*

"to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed." (61 Stat. 140; 29 U. S. C. § 158 (b) (6).)

How shall these words be interpreted and applied to the circumstances of this case?

The Board and the union offer us two unpalatable alternatives. In their view we must attribute to the Con-



gress of the United States either an intention to enact an ineffective gesture or, on the other hand, a want of the minimum drafting skill required to translate policy into statute. We shall examine these alternatives in turn.

#### A. LEGISLATIVE POLICY OF SECTION 8(b)(6).

It is of basic importance to keep in the foreground the general policy sought to be furthered by Congress in the enactment of this Section. This policy may be simply stated.

The abuses and the economic absurdities of union make-work and featherbedding devices have been vigorously condemned by the public, by economists, by employers and often by enlightened unions. Spurred on by public opinion increasingly critical of such practices on the part of the unions, Congress in 1947 included within the list of unfair labor practices on the part of unions the anti-featherbedding provision, Section 8 (b) (6).

The Bill enacted first by the House of Representatives went quite far. So flagrant had been the featherbedding abuses of the American Federation of Musicians in radio broadcasting that Congress had already passed in 1946 the Lea Act, or Anti-Petrillo Act, imposing criminal penalties upon almost every variety of make-work practice in that field. (60 Stat. 89; 47 U. S. C. § 506.) The original Hartley Bill, H. R. 3020, 80th Congress, First Session, included in Section 2 (17) and Section 12 many of the operative provisions of the Lea Act and extended these prohibitions beyond the broadcasting industry to all areas of economic activity. And significantly the featherbedding examples stressed in the House in the debate on these provisions of the Hartley Bill were the stand-by orchestra practices of the American Federation of Musicians.

For reasons explained by Senator Taft, Congress did not ultimately enact in the Taft-Hartley Act a statutory provision treating featherbedding problems in their entirety. Speaking with regard to Section 8 (b) (6) in the form in which it was ultimately passed, Senator Taft explained:

"Section 8 (b) (6) of the conference agreement covers a matter with which the House bill dealt extensively under the topic of featherbedding practices. \* \* \* While the Senate conferees were in sympathy with the objectives of this portion of the House bill, it seemed to them that it was almost impossible for courts to determine the exact number of men required in hundreds of industries and all kinds of functions. The provisions in the Lea Act from which the House language was taken are now awaiting determination by the Supreme Court, partly because of the problem arising from the term 'in excess of the number of employees reasonably required.' Therefore, the conferees were of the opinion that general legislation on the subject of featherbedding was not warranted at least until the joint study committee proposed by this bill could give full consideration to the matter." (Appendix A, pp. III, IV.)\*

and again:

"We thought that probably we had better wait and see what happened, in any event, even though we are in favor of prohibiting all feather-bedding practices." (Appendix A, p. III.)

But the dilution of the stringent House measure did not reflect a lapse of Congressional interest in the abuses

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\* For the convenience of the Court we have included as Appendix A to this brief a legislative history of Section 8(b) (6), containing a complete collection of all references made to the provision in its final form. Legislative statements quoted in the main body of this brief may be found in their full context in this Appendix at the page cited.

of the American Federation of Musicians. The examples given on the floor illustrating the purpose and operation of the present Section 8 (b) (6), continued to be taken from the practices of this union. For example, Senator Taft says respecting the present Section 8 (b) (6):

"It is intended to make it an unfair labor practice for a man to say, 'You must have 10 musicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway.'" (Appendix A, p. vi.)

And Senator Ball, in colloquy on the floor, stated:

"\* \* \* it [Section 8 (b) (6)] applied only to situations, for instance, where the Musicians' Federation forces an employer to hire one orchestra and then to pay for another stand-by orchestra, which does not work at all." (Appendix A, p. xi.)

No other union and no other union practice even shared the limelight.

The purpose of Section 8 (b) (6) was economic. The economic purpose of the provision was to restrict certain undesirable economic activities on the part of labor unions. The restrictive economic purpose of the provision, to judge from the statements of the draftsmen, was most particularly to prevent certain undesirable economic activities of the American Federation of Musicians. It is quite impossible to ascribe any other general objective to the Congressional enactment of Section 8 (b) (6).

It is earnestly submitted that no germ of a practical policy is detectable in the interpretation put upon this Section by the Board and the union. No remedial economic consequences flow from it; no economic or social abuse is halted. We can safely challenge the Board and the union to suggest any meaningful content left to this provision under their interpretation or to offer any useful policy to be subserved by a statute deliberately enacting that interpretation into law.

On the legislative record it cannot be seriously asserted that Congress had no substantial economic objective in mind in enacting Section 8 (b) (6). We therefore turn our attention to the second alternative offered by the Board and the union—that, whatever its underlying policy, Section 8 (b) (6) is so inadequately drafted that it commands only token compliance.

## B. STATUTORY ANALYSIS.

Great confusion has attended discussion of the phraseology of Section 8 (b) (6). We think that the terminology will bear close analysis and application to the facts of this case.

### 1. "In the Nature of an Exaction."

"It shall be an unfair labor practice for a labor organization or its agents \* \* \* to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

An initial point of difficulty is the emphasized phrase "in the nature of an exaction." It is apparently the position of the Board and of the union that in some way the use of this term means that the proscriptions of Section 8 (b) (6) are not effective unless the union exerts some unusual or exceptional or extreme form of economic coercion. It is then contended that no such coercion is shown by the present record. The position is sound neither in analysis nor application.

#### a. The Statute.

(1) A moment's reflection will demonstrate that the union's interpretation cannot be correct. Congress and the courts have frequently concerned themselves with the



problem of the permissible methods by which both employer and employee may pursue their objectives. Violence on the part of picketers and coercion on the part of employers have both quite properly been forbidden. But it is absurd to suggest that any such preoccupation with method was in the mind of Congress in its enactment of Section 8 (b) (6). It was a certain union objective which was to be outlawed, not a particular method of obtaining it. The legislative record shows this clearly.

No member of either house suggests that the objectionable feature of featherbedding practices is that they are enforced by the union through coercive tactics. No objection is raised by any opponent of the bill on the ground that the statute would prevent unions from employing bargaining *sanctions* theretofore legal. The controversy turns entirely upon the *objectives* for which even normal union bargaining tactics should be forbidden.

The legislative history of the provision supports and explains the use of the language and the reason for the choice of phraseology. There was undeniably a fear on the part of the draftsmen that Section 8 (b) (6) might be interpreted too broadly and might be construed to remove from the area of collective bargaining such fringe benefits as paid vacations and paid rest periods. And it was exactly to allay this fear that the language "in the nature of an exaction" was included. Senator Taft, in an interchange with Senator Pepper, explains the point clearly.

"\* \* \*

Mr. Pepper: Would it be an unfair labor practice for a group of women working in a textile mill to insist upon the employer giving them a rest period of 15 minutes each morning, and to be paid for that work period when they were not actually working?

Mr. Taft: No; I do not think that is in the nature of an exaction.

Mr. Pepper: Suppose they said they were going to strike if they did not get the rest period, and they therefore forced the employer to give it to them as a condition of continuing to work.

Mr. Taft: They are paid for the work they do.

Mr. Pepper: But they are paid for the 15 minutes when they are resting and not working.

Mr. Taft: In my opinion that would not be a violation of this section.

Mr. Pepper: There are contracts in force between a great many unions and employers under which, if a worker reports for work in the morning at the appointed time and finds that he is not going to be required to work that day, the employer must pay him for the day's work. Would insistence by a labor union upon payment of a day's pay to a worker who reported for work in the morning, when the employer gave him no work to do when he got there, be considered an exaction?

Mr. Taft: No: I do not think that is in the nature of an exaction. He is paid for coming to work at the request of the employer. It is not in the nature of an exaction." (Appendix A, p. v.)

None of these union practices represented an "exaction," regardless of the economic pressure brought to bear by the union. None was a violation because all represented efforts toward justifiable union objectives.

It is not suggested that there is no element of pressure involved in the phrase "in the nature of an exaction." There is, of course. The point is that there is no *unusual* aspect of pressure implied by the term "in the nature of an exaction." The pressure referred to is the usual bargaining pressure of the conference table—the normal process of collective bargaining powered by the lever of economic bargaining potential on both sides. The essential feature in the unfair labor practice prohibited by Section 8 (b) (6) is that these economic pressures, otherwise

legitimately used in collective bargaining, are coupled with unjustifiable objectives. It is the combination which constitutes an "exaction."

(2) The grammar of the section conforms to this interpretation.

Section 8 (b) (6) by its terms says that it shall be an unfair labor practice for a labor union "to cause or attempt to cause" an employer to pay money "in the nature of an exaction" for services which are not to be performed. The statute does not say that it shall be an unfair labor practice for a labor union to exact or attempt to exact such a payment. As a matter of syntax the phrase "in the nature of an exaction" refers to the payment of the money. It is not English grammar to say that one *does* something *in the nature of* something else. The phrase "in the nature of" is used to modify nouns, not verbs. As, for example, it is English to say "A legislature sometimes imposes a tax in the nature of a penalty." But one does not say "A legislature sometimes taxes in the nature of a penalty."

The grammatical difference is material here. The verb in Section 8(b) (6) is "cause or attempt to cause," not "exact." And the phrase "in the nature of an exaction" is not adverbial. It does not describe a prohibited method or manner of obtaining an objective but rather the prohibited objective itself.

(3) Nor did Congress misuse the term "exaction" in its drafting of this phrase.

Webster's Unabridged Dictionary gives as its example of the use of the verb "to exact": "to wrest, as a fee or reward *when none is due*." And the example given under the word "exaction" is: "the exaction of tribute." "Exaction" is also defined as a "fee, reward, or contribution, demanded or levied *with severity or injustice*." Crabb's

*English Synonyms*, Revised Edition, offers as its example of the correct usage of the word "exact"

"The collector of the revenue exacts when he gets from the people *more than he is authorized to take*:"  
Page 319:

Again this is not to suggest that there is not an element of pressure contained within the word "exaction." The significant fact is that correctly used the term denotes a payment which is *unjustified, undue and unearned*.

(4) The preceding three subparagraphs have considered the legislative purpose, the grammatical use, and the diction of the phrase "in the nature of an exaction." The results are consistent and cumulative. This skilled coherence<sup>7</sup> belies the union's suggestion that Section 8(b) (6) is not sufficiently carefully drafted to achieve its purpose.

There is nothing in Section 8(b) (6) which requires the union to exert any unusual or extraordinary pressures beyond those of ordinary collective bargaining. Conversely, it is no answer to a charge of violation of Section 8(b) (6) for the union to argue that it did nothing to "coerce" the employer. It is enough, as the statute expressly says, for the union "to cause or attempt to cause" the employer to make the payment.

#### b. *The Record.*

(1) The critical question, under this interpretation of the meaning of the term "in the nature of an exaction," then, is to determine what the Union's objective was and whether that objective was a justifiable one. The question raised by the phrase "in the nature of an exaction" is whether the objective sought by the Union was one intended to be prohibited by the Section. This question is closely related to the analysis and application of the statu-



tory language "services which are not performed or not to be performed" and discussion of the point is reserved to that portion of this Brief. (See pages 22-28, *infra*.)

(2) It is not crucial to the employer's position, however, under the circumstances of the present case that the Court recognize as correct the interpretation here offered for the phrase "in the nature of an exaction." Under the particular record at hand even the interpretation urged by the union may be accepted and its requirements satisfied. If it should be thought, we think erroneously, that the use of the term "in the nature of an exaction" introduces a requirement of some special sort of coercive pressure on the part of the union, it is clear under the record at hand that in fact such coercive pressure was brought to bear. This must be true unless one should wish to argue that it is not coercion for the union to withhold from the Palace Theatre the services of traveling name bands for two years.

The facts are that it was at all times within the power of the local union to permit or to forbid traveling bands to play at the Palace. Under the provisions of the Constitution of the American Federation of Musicians, entrance of a traveling band into the jurisdiction of a local union was at all times within the discretion of the local union, as the union's Mr. Light testified. The recitations in the telegram and letter sent from the president of the Federation specifically recite that Local No. 24 in Akron had continued to advise the national headquarters to keep out traveling bands. The somewhat forgetful Mr. Teagle did recall notifying Acuff's manager that his demands had not been met, that there was no agreement and that the show should not appear. What more coercion would be necessary for a union to exert, if this is not sufficient, it is difficult to imagine. Only the point of a gun could be much more persuasive.

But it is our position that there is no necessity to fall back upon the certainty of the facts in this particular case. It is a wider principle for which we are arguing here and one which we think, under the history and wording of the statute, is undeniably sound. The inclusion of the phrase "in the nature of an exaction" suggests no necessity for a special showing of economic sanctions.

## 2. "To cause or attempt to cause."

"It shall be an unfair labor practice for a labor organization or its agents \* \* \* **to cause or attempt to cause** an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

The emphasized words "to cause or attempt to cause" must also be considered in the context of the present case. Failing to introduce the irrelevant and extrinsic factors of extraordinary coercion through the avenue of the phrase "in the nature of an exaction," the union has, in the alternative, implied that the phrase "cause or attempt to cause" must be construed as containing in it a requirement for an extraordinary coercive sanction of some sort.

This position is without support.

### a. *The Statute.*

(1) The only parallel term existing in the National Labor Relations Act appears in Section 8(b)(2) forbidding a union "to cause or attempt to cause" an employee's discriminatory discharge. Here it has been the position of the Board that "cause or attempt to cause" means what it says and that a union may be guilty of an unfair labor practice in causing or attempting to cause an employer to discriminate against an employee with-

out garrotting the employer, without blackmailing him, and without threatening him. A single letter from the union requesting and leading to an employee's dismissal has been held a sufficient "attempt to cause." \*

No reason has been suggested why the same phrase used twice in the same way in the same section of the same statute should be interpreted in two different ways.

(2) It is notable that insistence at a bargaining table upon assent to an unfair labor practice constitutes a failure to bargain and is in itself an unfair labor practice under Section 8(b) (3).†

(3) "To cause or attempt to cause" is simple everyday language. Its words do not suggest any element of extraordinary coercion. Precisely what degree of activity would be necessary on the part of the union to meet the requirements of the phrase we do not suggest, but wherever such a line might be, it is safe to say that the circumstances here are well within it.

#### b. *The Record.*

It would be a disquieting shock to the members of Local No. 24 to learn that their secretary and treasurer, Mr. Teagle, had not been for the past two years causing or

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\* *New York Shipbuilding Corporation*, 89 NLRB 1446 (1950); *National Union of Marine Cooks and Stewards*, 2 CCH Labor Law Reporter, ¶ 10,527 (1950).

† "But what the Act does not permit is the insistence, as a condition precedent to entering into a collective bargaining agreement, that the other party to the negotiations agree to a provision or take some action which is unlawful or inconsistent with the basic policy of the Act. Compliance with the Act's requirement of collective bargaining cannot be made dependent upon the acceptance of provisions in the agreement which, by their terms or in their effectuation, are repugnant to the Act's specific language or basic policy." *National Maritime Union of America*, 78 NLRB 971 (1948), enf. gr. 175 F. 2d 686 (C. A. 2 1949), cert. den. 338 U. S. 954 (1950), reh. den. 339 U. S. 926 (1950).

attempting to cause the Palace Theatre to make payments to the union members. To state the point is to demonstrate its falsity. Mr. Teagle and Local No. 24 excluded all name bands from the Palace for over two years to enforce their insistence upon payments to local musicians. They used every bit of bargaining power in their possession for that period.

These actions were most certainly aimed toward causing or attempting to cause the payments demanded, as any layman, unbeset by lawyers' subtleties, would answer at once.

### 3. "Services which are not performed or not to be performed."

"It shall be an unfair labor practice for a labor organization or its agents—to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

We are thus brought squarely to the issue of the meaning of the last phrase in Section 8 (b) (6), "services which are not performed or not to be performed." It is upon this wording that the greatest controversy has centered in the present case.

The problem may be best understood by stating the union's position first.

It is the argument of the union that "services" does not mean services, but means any form of activity, or perhaps the omission of some form of activity.

It is the position of the union that Congress meant to see to it through the enactment of this statute that no labor organization should receive payments unless it does some act or perhaps omits to do some act, regardless of its utility, benefit or desirability.



It is the union's position that it cannot be held guilty of an unfair labor practice so long as it is offering in exchange for the payments to do something (or not to do something) whatever the something may be.

It is the position of the union that an employer can be compelled to pay wages for any act or activity which the union demands to perform.

It does not reduce the union's case to absurdity, but is only a fair statement of its position to say that the interpretation they urge permits a union to compel an employer to pay wages to a local orchestra for the "service" of playing in a sound-proof, inaccessible room.

The union is not arguing here that under reasonable circumstances there may be payments for non-performance where the non-performance is ancillary to regular employment, as, for example, paid vacations or rest periods. It is rather the position of the union that the services not performed need not be ancillary to anything, nor need there be any relationship between the exorbitance of the payment demanded and the activity performed. It is inherent in the union's position that there would also be no violation of Section 8(b)(6) if it were to compel an employer to pay local musicians for striking one resounding chord as the curtain rises, giving an heroic trumpet toot at 2:30 A. M. every Tuesday morning or tinkling a triangle every afternoon just at tea time.

Utility, says the union, is no criterion. We are adjured not to allow economic or social circumstances to impinge upon judgment in this case, as though we were not dealing with a statute pre-eminently aimed toward the solution of economic and social problems. It is a measure of the strength of the union's position that they repeatedly press us to ignore these factors. We are being solemnly assured that Congress was not interested in protection of

the public against economic and social abuses and wastes, but was primarily interested in seeing to it that the members of the union obtain more exercise.

The stand-by orchestra is dead.

Long live the walk-by orchestra.

Is this interpretation inevitable? Must it be accepted despite its economic futility? We think not.

a. *The Statute.*

(1) The error of the union's position on the point springs from a single basic source. If unearned payments are forbidden to be made for inaction, three curatives are available: the payments may be stopped while the inaction continues; the payments may be continued while constructive labor is substituted for inaction; or, the payments may be continued while inaction is superseded by a flurry of undirected, purposeless or detrimental activity. It is essentially our position that Congress in outlawing payments for "services not to be performed" meant that payments should not be made except when earned by or incidental to constructive labor done. Equally essentially it is the view of the union, and apparently the Board, that Congress intended that the statute should be read in the only way which makes it ridiculous—intended that the payments should continue but that in exchange the union members paid should stamp their feet or blow their horns or play silently or do whatever other useless or harmful acts of commission or omission might appeal to them.

It is most earnestly pressed upon this Court that this kind of legal interpretation can do little to cast honor upon the law or its administrators. We think our position has the strength of common sense. We think our position conforms to the best established rule of statutory interpretation—that when alternative interpretations are possible, that one should be adopted which yields a practical and

sensible result rather than one which deprives the statute of all sense and meaning. *Haggar Co. v. Helvering*, 308 U. S. 389, 394 (1940).

(2) We do not suggest that the language of this clause is clear beyond the need for explanation. But we do assert, most vigorously that the interpretation for which we contend conforms to the legislative purpose of its enactors and places no strain upon the language used by its draftsmen.

The key word is the word "services." Webster's *Unabridged Dictionary* offers as the primary definition of the word "service" in this context:

"Performance of labor for the benefit of another, or at another's, command \* \* \*";

Dozens of other definitions are given in Webster. Many of them offer direct support for the position that "services" can only be performed for another's benefit or use. Attention is called, without quotation, to definitions 4, 5, 11, 16, 17, 18, 20 and 22. Some of the other definitions are clearly unrelated to the present problem, but no definition supports the interpretation urged by the union.

There is simply no answer to this point. The union can sustain its interpretation only by pretending the word "services" is not in the statute. The normal usage of the word "services," the usage clearly demonstrated by the general legislative desire of Congress to abolish feather bedding practices compelling payment where the employer gets no benefit and the usage consistently reflected in a score of definitions in Webster's *Unabridged Dictionary* make the conclusion irresistible that the word "services" as used in Section 8(b)(6) is restricted to acts or actions performed for the benefit of the employer.

Again, any layman would say that wages are paid only for services in this sense. No reason is offered why the statutory language should be construed otherwise.

(3) It is in connection with this interpretation of "services which are not performed or not to be performed" that the earlier considered phrase "in the nature of an exaction" must be read.

The union has suggested as support for its interpretation of "services" the asserted risk that any other reading would outlaw such recognized labor benefits as paid vacations and paid rest periods. It is questionable whether, as a logical matter, this contention upholds the union's interpretation, but in any event, the supposed dilemma is one of the union's own creation.

We are again presented with an example of very careful drafting in which the phrases must be considered together in order to determine their relationship and meaning as a whole. As we have explained in detail earlier in this brief, the function of the words "in a nature of an exaction" was not to outlaw particular coercive techniques for obtaining union objectives but to forbid the use of ordinary union tactics for the achievement of certain unjustified objectives. The importance and necessity of the phrase becomes clear when considered together with "services which are not performed or not to be performed." If it were not for the "nature of an exaction" language, there might be certain merit to the union's position that under the literal language of Section 8(b)(6), paid vacations and paid rest periods would be forbidden. But it is exactly this result which has been carefully avoided by the inclusion of the language "in the nature of an exaction."

The point is made quite clear in the colloquy between Senators Pepper and Taft, quoted *supra*, pages 15-16. (See Appendix A, page v.) And in a supplementary analysis offered by Senator Taft, the point appears again.



"A number of Senators have contended that this means that union requests for payment to employees of wages for lunch and rest periods or for waiting periods when machinery is being repaired will be illegal. It has also been stated that it would be a breach of this section for employees who are asked to report for work so as to be available as a relief squad in the event of emergency or need, to demand any money for their time. Of course this section does not affect such industrial practices, *as such activities are done at an employer's request and for valuable consideration incident to the employment itself.*" (Appendix A, p. x.)

The payments are not "in the nature of an exaction" if they are incidental to bona fide employment, and there is, therefore, no violation of Section 8(b)(6) in vacation payments even though they are, in a literal sense, made for services not performed.

Thus the goblin raised by the union is seen, like most goblins, to be non-existent. And, further, disproof of the union position respecting the scope of the "services" language further demonstrates the incorrectness of their position that the word "exaction" was included for the purpose of making extraordinary coercion a necessary element in the unfair labor practice. The phrase was included to *limit* the sweep of the phrase "services which are not performed or not to be performed."

By misconstruing the first phrase, the union has invented an argument for misconstruing the second.

Statutory language must sometimes be strained in order to carry out the underlying legislative policy. It is novel to hear it argued that statutory language should be doubly distorted in order to subvert the underlying policy.

(4) We have now examined the legislative statements of purpose made respecting the phrase "services

which are not performed or not to be performed." We have closely considered the words used in the phrase. We have scrutinized the relationship of the phrase to the balance of the section. It seems to us that there can be only one conclusion.

Taken in conjunction with the words "in the nature of an exaction," the phrase "services which are not performed or not to be performed" limits payments to (1) payments made for labor or work done for the benefit of the employer, or (2) payments made incidentally to labor or work done for the benefit of the employer, as for such fringe benefits as paid vacations or call-in pay.

#### b. *The Record.*

Each component phrase of Section 8(b) (6) has now been reviewed. With their individual meanings and meaning as a whole in mind it is possible to sum up their application to the circumstances of the present record.

(1) Applying what we consider to be the correct interpretation of "services which are not performed or not to be performed" to the facts of the present case, it is clear that the actions of the union fall squarely within it. The record shows that it was the union's insistent demand to play intermissions and overtures at the performances of the traveling name bands at the Palace. It is equally clear, and the union does not seriously contest, that the employer had no use for such intermissions or overtures, that they had been of no service to him, that they had no entertainment value, that they would not help to draw an audience and that they represented in fact a continuing interference in the operation of the theatre. It is clear that there were no "services" to be performed.

It has been shown that the union was attempting to cause the employer to make payments. See *supra*, pages

20-21. And if the statute requires an element of unusual coercion, as we think it clearly does not, that factor too is revealed by the present record. See *supra*; pages 18-19.

And the payments were in the nature of an exaction since they were unearned, were not for services to be performed and were not ancillary to bona fide employment.

In sum, the union's actions constituted explicit violations of Section 8(b) (6).

(2) Again, however, in view of the extreme facts shown by the record it is not necessary to the affirmance of this particular case that the correct interpretation of "services" be assumed. Even accepting the union's interpretation, we contend that it has violated Section 8(b) (6).

Even if it is assumed for some odd and unsuggested reason that the word "services" in Section 8(b) (6) means only the commission or omission of some useless or harmful act, we think the record in this case makes it clear that the union never intended that the acts which they offered would in fact be performed. We challenge the union's assertion that it genuinely contemplated the ultimate playing of these intermissions and overtures.

We do not question the bona fides of the union's offer in the sense that we think they would not have played these intermissions and overtures if requested. As the Trial Examiner remarked: "[I]t may be assumed that in all comparable situations, the stand-by orchestra is willing enough to give actual performances; musicians, being human, had no doubt rather play than not to play." (R. 361.) But we challenge Mr. Teagle's repeated statement that the union was "only seeking employment for its members" and we challenge the union's statement that it fully

intended and anticipated that these intermissions and overtures would ever be played.

The purpose of the union's argument here is, we suppose, not only to avoid the statute but to place us in the position of arguing that a union may not seek employment for its members. We shall not, of course, permit such a ridiculous position to be imposed upon us. But the question is loaded. The question is whether it was "employment" which the members of the union were seeking. The record shows that it was not.

If a lawyer were seeking employment, would he insist of a prospective client that he be hired only at such times as another lawyer was hired? Does the insurance salesman only seek to sell his insurance to one who he knows to be buying from another insurance salesman? Does not one normally seek employment where his services are needed and wanted and will be paid for in exchange for the benefit which they provide for the employer? Would anyone recommend to his friend that the best way to be employed for a job is to wait until another has been hired to perform it? Would anyone recommend to himself that the way to seek employment is to demand that job and only that job which has already been filled?

These questions are rhetorical. But it is not we who have raised them. It is the union which apparently holds this conception of the word "employment." The union in this case did not ask for employment. It asked that its musicians be paid to do something simultaneously with its performance by others.

Local stand-by orchestras had been paid off by the Palace Theatre for many years. They had always been available to play overtures and intermissions. It is represented by the union that they were at all times available for this purpose. They would presumably have appreciated



the opportunity to perform after dozens of rehearsals without actual performance. But they were almost never used.

It is not conceivable that with this kind of a background of experience, the union could seriously have thought that in the future the Palace Theater would find the use of musicians for that purpose a popular and acceptable practice. Would not the union's position be considerably more persuasive if there had ever been a record of the usefulness of such players? Or would it not be more supportable, if in the absence of such a record, the union had attempted to negotiate the employment of its people at times other than those at which name bands were simultaneously employed?

It is true that in later stages of the negotiations, the union permitted discussion of an arrangement under which local musicians would play for pick-up vaudeville acts, one such show being presented for each name band hired. The union, however, never agreed to such an arrangement, was not primarily interested in it, exerted the strongest economic pressure at its command for over a year before being reduced to discussing it at all and, significantly, still geared its demands to the hiring of the outside name bands, insisting upon a fixed ratio between the vaudeville shows and the name band engagements, regardless of the availability of the pick-up acts.

The fact is that this situation comes squarely within the example given by Senator Taft:

"[Section 8(b)(6)] is intended to make it an unfair labor practice for a man to say, 'You must have 10 musicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway.'" (Appendix A, p. VI.)

The Palace Theatre had hired, to continue the figure, six union musicians in the persons of the traveling name band. The local union has insisted upon the hiring of four more.

We do not think the union genuinely contemplated that it would play the overtures and intermissions. The Trial Examiner agreed with us in their findings upon this point. (R. 362, 363.) Under the National Labor Relations Act, as amended by the Labor Management Relations Act of 1947, the scope of judicial review has been expanded and, as this Court has already held, the evidence is to be reviewed upon the entire record.\* If this is done, we submit that even from the dead pages of the record, the real anticipations of the union will show forth clearly. The Trial Examiner, before whom the witnesses appeared, was convinced, apparently mainly from the testimony of the reluctant Mr. Teagle, that the union anticipated that the payments would be made quite independently of whether the intermissions and overtures were ever performed. The Court of Appeals agreed. We think they were right and we believe that the record taken as a whole supports this conclusion.

Under this view, then, too, even under the union's theory that useless acts may be "services," the union is seen to have been guilty of an unfair labor practice under Section 8(b)(6). It attempted to cause the payments. The "services" were not to be performed and everyone knew they were not to be performed. The payments sought were in the nature of an exaction since they were for "services" which were not to be performed, which were unjustified and which were not ancillary to true employment. Again, the explicit elements of a violation of Section 8(b)(6) are present.

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*Universal Camera Corp. v. NLRB*, 340 U. S. 474 (1951);  
*NLRB v. Pittsburgh Steamship Co.*, 340 U. S. 498 (1951).

(3) But we may go even further.

Suppose we were to concede not one point but two which we think clearly untrue: first, that a useless or harmful act is a "service"; and second, that the union fully intended, in fact would insist upon, performing the "services" of playing the intermissions and overtures. Is there not still offered by this case a violation of Section 8(b)(6)? We think so, for we do not believe that technical and formal compliance is the primary interest of the law.

It is a duty and function of the courts to guard against fraud upon the law. Anglo-American jurisprudence knows countless examples where token compliances with formal requirements have not prevented discerning courts from perceiving the substance underlying the form.

In the construction of a tax statute, this Court recently stated that

"To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress."

*Commissioner v. Court Holding Co.*, 324 U. S. 331, 334 (1945).

The principle is as applicable in labor law as in revenue law.

We do not suggest that Section 8(b)(6) imposes upon the courts the task of determining whether a given wage demand is reasonably related to the services to be performed. But, at some point unreasonableness merges into reposterousness. It presumably would be of some service to the Managing Director of the Palace Theatre to have his shoes shined once a week and his office window opened in the morning. But we do not believe that any court would permit the Musicians' Union under Section 8(b)(6) to compel an employer to pay full wages to a nine-man or-

chestra in exchange for their polishing the manager's shoes or opening his window once a month. It would be apparent, would it not, that there was no real relationship between the wages paid and the services performed, that no bona fide employment was involved and that the empty gesture of an insignificant service was the most thinly disguised evasion of the spirit and the force of Section 8(b)(6)?

The instance put must not be dismissed as a rhetorical reduction to absurdity or as an exaggeration. It is this very record which produces the absurdity and exaggeration. In the hypothetical case just given the union was at least performing *some* service of use and benefit to the employer. The employer, if he is compelled to pay, in any event, would prefer that his shoes be shined and his window opened, or that some service, however insignificant, be performed to his benefit rather than have his business operations disrupted by the interjection of such acts as the playing by a local orchestra of intermissions during the performance of a nationally known name band.

And if the union should, in order to put itself beyond the reach of Section 8(b)(6), insist upon the performance of these unwanted disservices, are we not presented with a pretty bit of statutory construction? Congress passes a statute calculated to protect employers against some forms of the featherbedding abuse. By a remarkable reading of this statute, the employer is not only required to continue paying, but he is deprived of his former right at least to buy his peace.

There must be something wrong with such an exercise in statutory analysis.

Thus again, even upon two assumptions taken most favorably toward the union, erroneous though they be, substantive violation of Section 8(b)(6) is still revealed



by the present record. The element of attempting to cause the payments remains as before. And the token offer to perform an insignificant and unwanted act, even assuming the act to be a service and to be in fact performed, taken together with a demand for full wages for nine men and the insistence upon performance together with the name band, combine to make the apparent compliance with the statute a patent evasion. This Court has hitherto shown no patience with such frauds upon statutes. It should not do so here.

**C. ANALYSIS OF AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION v. NLRB, 193 F. 2d 782 (C. A. 7, 1952).**

*American Newspaper Publishers Association v. NLRB*, 193 F. 2d 782 (C. A. 7, 1952) is docketed for argument together with the present case. It was the position of ANPA in its application to this Court for certiorari that the decision of the Court of Appeals for the Seventh Circuit in that case is in conflict with the decision of the Court of Appeals for the Sixth Circuit in the present case. In common interest with ANPA on this point, the National Labor Relations Board similarly asserted the existence of this conflict in its application for certiorari in the present case and, acting consistently, did not contest the granting of certiorari in the ANPA case.

For judicial decisions to be in conflict, it is necessary that they be delivered upon substantially identical facts raising substantially identical issues and that these issues be resolved inconsistently by the courts. Neither of these components is present here. The ANPA case is basically different in its circumstances and issues from the present case. And both courts expressly recognized the factors which separate them. The two decisions are not inconsistent with each other but are independent of each other.

The facts in the ANPA case were that regularly employed newspaper compositors, members of the International Typographical Union, insisted upon payments for "setting bogus" advertisements which, after being proof-read and corrected, were then destroyed without being used, the actual printing being done with matrices provided by the advertiser. The Court of Appeals for the Seventh Circuit found there was no violation of Section 8(b) (6) in this practice.

The reason is precisely that explained in detail in this brief at pages 26-28. Time spent in setting "bogus" represented only 5 per cent of the typographers' composition time; payment for the "bogus" was incidental to payment for bona fide services rendered by the union. The typographers still provided services for the employer during 95 per cent of their composition time. This "bogus" was *incidental* to the real work for which the employees were hired and paid. The employee was "not hired merely to set 'bogus,' but hired to do composition work which the employer required." 193 Fed. 2d 782, 802.

The contrast of this situation with the present one is apparent and the difference lies in two most important respects. In the first place, in the present case the members of the Union were being hired to do nothing "which the employer required." To the contrary, that which the Union members assertedly desired to do was a positive hindrance. The demand for these payments was incidental to nothing. Thus, even though actually performed, the acts of the musicians here would not have been services or incidental to services.

In the second place, the idle setting of "bogus" in ANPA case was at least performed. While no economic advantage flowed from this it does differentiate in the ANPA

situation from that in the record at Bar. For here, as the trial examiner found, and the Court of Appeals concluded, the only reasonable inference from the record is that the Union would not, in fact, have gone through the meaningless and distracting musical motions upon which it was assertedly insisting.

We are not alone in detecting the crucial factor involved in these two cases nor is our argument one based only upon our interpretation of the facts in the two records. Both courts isolated and stressed the critical difference.

The reasons given by the court for its decision in the ANPA case are particularly clear. Reviewing Section 8(b)(6), the Court first noted the material already set forth in this brief at pages 11-12 respecting the original Hartley Bill and the broad anti-featherbedding provision later curtailed by the Conference Committee. The court added:

"Senator Taft \* \* \* clearly indicated that in his opinion the only practice covered by § 8(b)(6) was the practice of demanding money where no *work* had been done. He explained further, however, that the section did not even cover all cases where employees were paid for time during which they did not work, such as rest periods, ~~time~~ for lunch and vacation periods; that such periods were merely incidental to the work for which the employee was hired and paid \* \* \*" 193 F. 2d 782, 801.

And, after quoting the same statement by Senator Taft quoted on page 13 of this brief, the Court continued:

"Senator Ball in speaking in favor of this section also said that it applied to a situation where an employer is required to pay for a stand-by orchestra, 'which does no work at all.' (93 Cong. Rec. 7683.)

In the instant case the pay for 'setting bogus' was only for the time the employee actually worked in setting the 'bogus,' amounting to approximately five per cent. of his total working time. *He was a regular employee, not hired merely to set 'bogus,' but hired to do composition work which the employer required.* \* \* \* (Emphasis added.) *Id.* at 802.

On this basis the Court of Appeals for the Seventh Circuit concluded that the Typographical Union was not guilty of a violation of Section 8 (b) (6).

The Court of Appeals for the Sixth Circuit similarly recognized the critical significance of the fact that the Union in the present case could not claim that in any degree its unwanted acts were incidental to bona fide employment. This court, too, discusses the legislative background of Section 8 (b) (6) and makes special reference to

"Senator Taft's effort to convince his colleagues that the section does not reach conventional *stand-by practices normally incident to services required by an employer from his employees in the usual course of his business* and of benefit to him such as rest periods, lunch periods, relief duty in case of emergency or need, inactive periods during time of machinery repair, and other non-work presence of regular employees upon the employer's premises." 196 F. 2d 61, 63. (Emphasis added.)

And perhaps of most significance is the fact that, like the Court of Appeals for the Seventh Circuit, the Court of Appeals for the Sixth Circuit chose as its example of the kind of practice against which Section 8 (b) (6) was directed the stand-by orchestra device of the American Federation of Musicians.



"The dominant purpose of § 8 (b) (6), however, is illuminated by Senator Taft in 93 Cong. Rec. 6446 where he said of it:

"\* \* \* To make it an unfair labor practice for a man to say you must have 10 musicians and if you insist that there is room for only 6 you must pay the other 4 anyway, that is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept.' The analogy of the example to the presently charged labor practice falls barely short of perfection, and reaches it if we substitute 'need' for 'room.' " *Id.* at 63.

Thus both Courts of Appeals recognized the critical distinguishing factor of bona fide employment, and the ANPA case and the present case are seen to be separate and distinct raising different legal issues. They both pose problems of interpretation of Section 8 (b) (6) but they do not stand or fall together. Their separate identities must be maintained in the analysis and application of the statute.

#### D. COLLECTIVE BARGAINING.

Some suggestion was made in the proceeding before the Court of Appeals by the intervenor union that the interpretation of Section 8 (b) (6) advanced by the employer would undermine and imperil the entire collective bargaining process. It is the asserted fear of the union that if the courts enforce Section 8 (b) (6) as Congress has written it, they will presume to decide in the case of each employer what jobs are necessary to the operation of his business and in the case of each employee what wages may be asked.

It is difficult to see wherein the union finds cause for such alarm. Of course Congress intended no such pur-

pose. Of course we argue for no such result. And of course the courts will not so construe the statute.

Almost any legal proposition can, by the use of imaginative hypotheticals, be extended to a point of absurdity. But it is not usually thought that the need for a rule of reason, or the necessity for a practical limitation upon the excesses of logic, requires that the courts or the legislature abdicate responsibility and stand powerless to deal with critical problems.

The Court is presented in this case with two alternatives. The alternative offered by the union and the Board vitiates Section 8 (b) (6) entirely. The alternative offered by the employer gives effect to Congressional policy and meets the problem at bar. Though we cannot purport to answer future cases in advance, we think the courts may be relied upon in this field of the law as in others to meet tomorrow's case when it arises with a rule of reason. And indeed, the courts have been called upon before to determine whether a union is seeking bona fide employment. See *United States v. Local 807*, 315 U. S. 521 (1942). The collective bargaining process has continued unimpaired.

The proper choice between the alternatives offered here is clear.

#### E. CONCLUSION.

Section 8 (b) (6) represents a coherent and effective statutory statement of an important and ascertainable congressional policy. The National Labor Relations Board seeks to eviscerate it.

The application of this statute to some future borderline cases may, as in all fields of law, be difficult. But if this case is reversed, there will be no future borderline cases, for this record raises the prototype case—the specific union and the specific practice which inspired the statute.

Congress has legislated specifically against the stand-by orchestra. The Board should not be permitted to make it necessary for Congress to re-legislate against the walk-by orchestra.

It is respectfully submitted that the judgment of the Court below should be affirmed.

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Dated November 10, 1952.

I  
**APPENDIX A.**

**Legislative History of Section 8(b)(6) Labor Management Relations Act, 1947 (61 Stat. 140; 29 U. S. C. § 158 (b)(6)).**

Legislative action on the Bill which ultimately became the Labor Management Relations Act, 1947 (usually called the Taft-Hartley Act) began with the introduction by Congressman Hartley of H. R. 3020, 80th Cong. 1st Sess. As reported from Committee and passed by the House this Bill contained within it extensive and detailed provisions dealing with the subject of make work and feather-bedding practices. See H. R. 3020, 80th Congress, First Sess., Sec. 2 (17) and Sec. 12.

The original Taft Bill as passed by the Senate contained no provisions respecting this subject.

The Bill reported from the Conference Committee contained the present version of Sec. 8(b)(6). No amendments to the conference version were made on the floor of either House.

The material included here constitutes the complete record of all remarks made on the floor or statements made in reports respecting the final version of Sec. 8(b)(6). They are grouped here first by House of Congress and secondly in chronological order.

References to the Congressional Record are to the permanent bound volumes. Page references are also given to **LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947**, published by the National Labor Relations Board, USGPO Wash., 1948, cited "History."

*House of Representatives.*

Excerpt from House Conference Report No. 510 on H. R. 3020, 80th Congress, First Sess., page 45, 93 Cong. Rec. 6361, 6374, June 4, 1947 (History p. 549):



"\* \* \* It is also made an unfair labor practice for a labor organization or its agents to cause or attempt to cause an employer to pay any money or thing of value, in the nature of an exaction, for services which are not performed or not to be performed. This provision derives from the provisions of the House bill relating to 'feather-bedding' practices."

Excerpt from speech of Hon. Gerald W. Landis, respecting the amended H. R. 3020 as reported from Conference Committee, 93 Cong. Rec. 6386, June 4, 1947 (History p. 905):

"We added the following sections to the Senate Bill:  
\* \* \* 'make it a violation of the law for a Union to try to compel an employer to pay its members for services not performed.' \* \* \*"

Excerpt from House Document No. 334, 80th Congress, First Sess., Presidential Veto Message, 93 Cong. Rec. 7485, June 20, 1947 (History p. 917):

"(3) The bill presents the danger that employers and employees might be prohibited from agreeing on safety provisions, rest-period rules, and many other legitimate practices, since such practices may fall under the language defining 'feather bedding'."

### Senate:

Statement of Senator Taft on the floor respecting the amended H. R. 3020 as reported from Conference, 93 Cong. Rec. 6441, June 5, 1947 (History p. 1535):

Mr. Taft:

"There is one further provision which may possibly be of interest, which was not in the Senate bill. The House had rather elaborate provisions prohibiting so-called feather-bedding practices and making them unlawful labor practices. The Senate conferees, while not approving of feather-bedding practices, felt

that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, and a determination of facts which it seemed to me would be almost impossible. So we declined to adopt the provisions which are now in the Petrillo Act. After all, that statute applies to only one industry. Those provisions are now the subject of court procedure (*sic*). Their constitutionality has been questioned. We thought that probably we had better wait and see what happened, in any event, even though we are in favor of prohibiting all featherbedding practices. However, we did accept one provision which makes it an unlawful-labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine, and we accepted that additional unfair labor practice on the part of unions, which was not in the Senate bill."

Prepared statement of Senator Taft giving detailed summary of differences between House, Senate and Conference Bills, 93 Cong. Rec. 6443, June 5, 1947 (History p. 1540):

Mr. Taft:

"Section 8(b)(6) of the conference agreement covers a matter with which the House bill dealt extensively under the topic of featherbedding practices. There was no corresponding provision in the Senate amendment. The provisions in the House bill made unlawful and enjoined any strike to compel an employer to accede to featherbedding practices. Among the activities defined as a featherbedding practice by the House bill were: (a) Agreeing to employ persons in excess of the number reasonably required, (b) paying money in lieu of employing such an excess number of persons, (c) paying more than once for

services performed, (d) paying money for services not performed, and (e) paying a tax for the privilege of using certain articles or operating certain machines or agreeing to restrictions upon their use. While the Senate conferees were in sympathy with the objectives of this portion of the House bill, it seemed to them that it was almost impossible for courts to determine the exact number of men required in hundreds of industries and all kinds of functions. The provisions in the Lea Act from which the House language was taken are now awaiting determination by the Supreme Court, partly because of the problem arising from the term 'in excess of the number of employees reasonably required.' Therefore, the conferees were of the opinion that general legislation on the subject of featherbedding was not warranted at least until the joint study committee proposed by the bill could give full consideration to the matter. Since the matter of exacting money for services not to be performed borders definitely on extortion, the conferees agreed to the insertion of a paragraph (section (b) (6)) which makes it an unfair labor practice to cause or attempt to cause employers to pay money under such circumstances."

Colloquy between Senators Pepper and Taft, 93 Cong. Rec. 6446, June 5, 1947 (History pp. 1544-5):

"Mr. Pepper. Does the provision to which the Senator just referred include language about extortions in connection with featherbedding?"

Mr. Taft. Yes.

Mr. Pepper. The Senator was speaking about subparagraph (6) of section 8, on page 8.

Mr. Taft. That is correct. It makes it an unfair labor practice, 'to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an extortion, for services which are not performed or not to be performed.'

Mr. Pepper. The definition of 'exact' in Webster's New International Dictionary, second edition, unabridged, is as follows:

To demand or require authoritatively or peremptorily; to enforce the payment of or a yielding of; to compel to yield or furnish; hence to wrest; as a fee or reward when none is due.

Would it be an unfair labor practice for a group of women working in a textile mill to insist upon the employer giving them a rest period of 15 minutes each morning, and to be paid for that work period when they were not actually working?

Mr. Taft. No; I do not think that is in the nature of an exaction.

Mr. Pepper. Suppose they said they were going to strike if they did not get the rest period, and they therefore forced the employer to give it to them as a condition of continuing to work.

Mr. Taft. They are paid for the work they do.

Mr. Pepper. But they are paid for the 15 minutes when they are resting and not working.

Mr. Taft. In my opinion that would not be a violation of this section.

Mr. Pepper. There are contracts in force between a great many unions and employers under which, if a worker reports for work in the morning at the appointed time and finds that he is not going to be required to work that day, the employer must pay him for the day's work. Would insistence by a labor union upon payment of a day's pay to a worker who reported for work in the morning, when the employer gave him no work to do when he got there, be considered an exaction?

Mr. Taft. No; I do not think that is in the nature of an exaction. He is paid for coming to work at the request of the employer. It is not in the nature of an exaction.

Mr. Pepper. What I wanted to emphasize to the able Senator is that the language in the conference re-



port is so broad that it would clearly include such a situation, because it is provided that it shall be an unfair labor practice to 'cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.'

It seems to me that the language is broad enough to cover both the cases which I have mentioned, because they involve a demand that payment be made for time when actually no work was performed.

Mr. Taft. I am sorry to disagree with the Senator, but it seems to me that it is perfectly clear what is intended. It is intended to make it an unfair labor practice for a man to say, 'You must have 10 musicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway.' That is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept."

Statement on the floor by Senator Murray, 93 Cong. Rec. 6498, June 6, 1947 (History pp. 1570-1):

"Mr. Murray. \* \* \*

"The other new unfair labor practice is that with respect to so-called featherbedding. Under a new section 8(6) it is an unfair labor practice to force or require an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed. Let me observe at the outset that what is featherbedding to an employer is invariably something else to the workers. Most frequently such provisions are designed to protect the safety of the workers; many of the contract terms covering railway workers which are claimed to be featherbedding actually had their origin, and continue to have a justification, in safeguarding the life and health of the workers. Full-crew provisions, auto-

matic-coupler requirements, required signal and watchman protections, are examples.

\* \* \*

Mr. Taft. I want to point out that railway labor has never been covered by the Wagner Act; it has always been covered by the Railway Labor Act, which provides a somewhat different procedure. We saw no reason to change that situation, because there were no abuses which had arisen in connection with the operation of the Railway Labor Act. In general, we confined our amendments to the bill to acts which, from evidence before the committee, were specifically shown to be abuses.

Mr. Murray. I am referring to the so-called feather-bedding activities in the railroad industry as illustrations of matters that may be insisted upon by workers as a matter of safety for the protection of their health and life. I am merely using them as illustrations of so-called 'feather bedding' which can be justified.

In the mining industry the stationing of men to handle ventilation equipment or to conduct inspections are demanded by the men for their protection. More often, perhaps, these union requirements are directed at the speed-up; there is a limit to physical endurance and many employers have in the past, and would be willing again, to work their men beyond that point did not provisions in the contracts protect them. Speed-up in the automobile industry which existed prior to organization was the main grievance of the workers. Frequently unions impose these conditions for the economic security of their members. Where employment is sporadic and highly skilled the maintenance of the industry itself may demand that men be paid for services not to be performed. We do not cut off the pay of our generals in time of peace; we do not pay a lighthousekeeper only when he is trimming the lamps; we do not pay a watchman only while engaged in the business of catching criminals.

## VIII

This provision is merely a demand that the risks of job insecurity, intermittent employment, and slack be borne by the workers entirely and not by industry. It is of a piece with that industrial practice which in times of depression lays off the men in the shop without even reducing the salary of the vice president."

Statutory analysis offered by Senator Murray, 93 Cong. Rec. 6501, 6503, June 6, 1947 (History p. 1578):

"Mr. Murray.

"Analysis of Title I of H. R. 3020, Taft-Hartley Bill.

\* \* \*

"The provisions of section 8 (b) (6) are directed against so-called feather-bedding practices. This section was also added by the conference committee. This provision like so many other provisions of the bill, although directed toward a desirable objective, could easily be used to interfere with legitimate union activities. In evaluating the possible impact of this section it must be borne in mind that many of the practices now viewed as feather-bedding practices had their origin in the health and safety requirements of workers. The determination, therefore, of whether a particular demand by a union for the employment of additional help is in effect featherbedding or a legitimate demand would in many cases require a detailed knowledge of the requirements of the particular company involved. The difficulty of accumulating this type of information and the type of experience necessary to make a just determination of the issue is obvious.

"The chief danger in the provision is that it may restrict labor organizations in their attempts to combat speed-ups, to protect the safety and health of the workers, and to spread the burden of unemployment. These considerations suggest that the solution of this problem could better be left to the collective bargaining process."

Statement by Senator Pepper, 93 Cong. Rec. 6514,  
June 6, 1947 (History p. 1590):

"Mr. Pepper.

"Mr. President, I pass on to the next subject I wish to consider, which is paragraph (6), which reads as follows:

To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or any other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

We had some discussion regarding that yesterday. The able Senator from Ohio submitted his views. I asked the Senator from Ohio two questions: First, what about the case of a group of women workers who demand of the employer a 15-minute rest period every morning, and maybe another one in the afternoon, and who demand pay for the time they are resting? That comes within the language of the bill, in my opinion. At least it is a litigable subject, and this bill is replete with opportunities on the part of employers to sue the unions, to claim an injunction, or to claim some kind of redress from the National Labor Relations Board.

I pointed out another case to the Senator from Ohio. In the contracts of most of the unions I am told that a worker reports for work in the morning. The employer may say, 'I do not have anything for you today.' The worker has gotten up and gone there. He is ready. Under union contracts the worker can get pay for that day, though he does not work. If he strikes or threatens to strike for such a provision in the contract he comes squarely within this language of demanding pay for a time when he did not work. This is a subject of litigation, and I shall come later to a provision of the bill which will show that one of the ways that the employer can wreck a union is to keep his high-price corporation counsel busily engaged



suing the union, attaching its funds, and in other ways making the operation of the union impossible or extremely difficult."

Excerpt from statement of House Conference Managers, 93 Cong. Rec. 6534, June 6, 1947 (History p. 1618):

"\* \* \*

"It is also made an unfair labor practice for a labor organization or its agents to cause or attempt to cause an employer to pay any money or thing of value, in the nature of an exaction, for services which are not performed or not to be performed. This provision derives from the provisions of the House bill relating to 'featherbedding' practices."

Supplementary analysis offered by Senator Taft, 93 Cong. Rec. 6859, June 12, 1947 (History pp. 1623-4):

"Section 8 (b) (6): This is a section taken from the elaborate prohibitions in the House bill with respect to featherbedding. All that it does is to make it an unfair labor practice to cause or attempt to cause employers to pay money in the nature of an exaction for services which are not performed or not to be performed. A number of Senators have contended that this means that union requests for payment to employees of wages for lunch and rest periods or for waiting periods when machinery is being repaired will be illegal. It has also been stated that it would be a breach of this section for employees who are asked to report for work so as to be available as a relief squad in the event of emergency or need, to demand any money for their time. Of course this section does not affect such industrial practices, as such activities are done at an employer's request and for valuable consideration incident to the employment itself. The use of the words 'in the nature of an exaction' makes it quite clear that what is prohibited is extortion by labor organizations or their agents in lieu of providing services which an employer does not want."

Statement of Senator Ball, respecting Presidential veto message, 93 Cong. Rec. 7529, June 23, 1947 (History p. 1639):

Mr. Ball:

"Mr. President, in his second list of objections to the bill, under paragraph (3) of his veto message, the President has this to say:

The bill presents the danger that employers and employees might be prohibited from agreeing on safety provisions, rest-period rules, and many other legitimate practices, since such practices may fall under the language defining "feather bedding."

Mr. President, that again is a complete distortion of the actual wording of the section to which the President refers, which is 8 (b), which makes it an unfair practice for a labor organization—

6. To cause or attempt to cause an employer to pay or deliver, or to agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

There is not a word in that, Mr. President, about 'featherbedding.' It says that it is an unfair practice for a union to force an employer to pay for work which is not performed. In the colloquy on this floor between the Senator from Florida and the Senator from Ohio, before the bill was passed, it was made abundantly clear that it did not apply to rest periods, it did not apply to speed-ups or safety provisions, or to anything of that nature; it applied only to situations, for instance, where the Musicians' Federation forces an employer to hire one orchestra and then to pay for another stand-by orchestra, which does not work at all."

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**No. 238**

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1952**

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**NATIONAL LABOR RELATIONS BOARD, PETITIONER,**

**v.**

**GAMBLE ENTERPRISES, INC., RESPONDENT.**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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**BRIEF OF LOCAL NO. 24, AMERICAN FEDERATION OF  
MUSICIANS, AS AMICUS CURIAE**

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*American Federation of Musicians.*

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NATIONAL LABOR RELATIONS BOARD, PETITIONER,

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## BRIEF OF LOCAL NO. 24, AMERICAN FEDERATION OF MUSICIANS, AS AMICUS CURIAE

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Local No. 24, American Federation of Musicians, files this brief as amicus curiae, having obtained and filed with the Clerk of this Court the written consents of the parties to this case. Local No. 24 is at the very fulcrum of the issue presented to this Court. That issue is whether the demand by Local No. 24 that certain of its members be hired for actual work constituted a violation of Section 8(b) (6) of the Labor-Management Relations Act.

Local No. 24 is in full accord with the statement of the facts, the analysis of the issue and the legal arguments set forth in the brief of the Solicitor General. But it believes that certain factors of peculiar importance from the union standpoint should be emphasized and brought to this Court's attention as a supplement to that excellent brief.



## THE STATUTE AND ITS LEGISLATIVE BACKGROUND

Certainly a bona fide request by a labor union that additional men be employed—even though the employer does not want or need those men—does not fall within the accepted meaning of language which merely outlaws any attempt to cause an employer to pay any money, “in the nature of an exaction, for services which are not performed or not to be performed.” Provided actual work by the additional men is contemplated, such a request cannot by any stretch of the lexicon be said to constitute the type of action so plainly referred to in Section 8 (b) (6). On the contrary, it is an attempt to secure money for services which are in fact to be performed.<sup>1</sup> And the money which is sought is money in payment for actual work, something quite different from “an exaction.”

But by a wholly unwarranted abuse of the interpretative process, the court below has read Section 8 (b) (6) in a manner at war with the English language and with the clear legislative history

<sup>1</sup> The record is undisputed that Local No. 24 at all times requested that local members be employed to perform actual work. (R. 148, 361, 374.) Respondent seeks to avoid this crucial fact by making an unsupportable assertion that the union did not genuinely contemplate that it would actually perform work. (Brief, p. 32.) But the respondent is well aware that there was no duplicity in the request of Local No. 24. After the Board's decision in this proceeding, the respondent entered into a written agreement with Local No. 24 on March 5, 1951. This agreement was premised upon the same demand for additional employment that is in issue in this case. And this agreement was fully performed, with actual work being done by the employees.

behind that language. It has viewed Section 8 (b) (6) as if it proscribed any request for services which the employer unilaterally determines is unwanted, unneeded or unacceptable, regardless of whether actual work is contemplated by the request.<sup>2</sup> Even if the legislative history in some way supported such a reading of the section, the plain language used by the legislators would be controlling and the error of the judgment below would be manifest.<sup>3</sup> But the legislative backgrounds of few statutes so compellingly confirm the plain meaning of resulting statutory language as does the background of Section 8 (b) (6).

The court below read back into Section 8 (b) (6) that which Congress had deliberately taken out. It treated the section as though the original House version<sup>4</sup> had become the law, a version which spe-

<sup>2</sup> The court below said that the "dominant purpose" of Section 8(b) (6) was to prevent payment for services which the employer "does not want, does not need, and is not even willing to accept." (R. 398.)

<sup>3</sup> "The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." *Gemsco, Inc. v. Walling*, 324 U.S. 244, 260. See also *United States v. St. Paul, M. & M. R. Co.*, 247 U.S. 310.

<sup>4</sup> "To translate this Act by a process of interpretation into an equivalent of the bills Congress rejected is, we think, beyond the fair range of interpretation." *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, 508-9.

<sup>5</sup> Section 12(a)(3)(B) of H.R. 3020, 80th Cong., 1st Sess., outlawed certain union featherbedding practices, defined in Section 2(17) to include any practice which has the effect of requiring an employer "to employ or agree to employ any

cifically proscribed any attempt to require an employer "to employ or agree to employ any person or persons in excess of the number of employees reasonably required by such employer to perform actual services." But the House version, drawn from the Lea Act,<sup>6</sup> was discarded by the joint conference committee for two significant reasons: (1) it was felt that "it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many";<sup>7</sup> (2) constitutional problems, as then undetermined, were thought to be so implicit and so significant as to warrant a "wait and see" attitude.<sup>8</sup> The only provision that was adopted, said Senator Taft, was that "which makes it an unlawful labor practice for a union to accept money for people who do not work," a situation that was said "to be a fairly easy case, easy to determine."<sup>9</sup> The court below

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person or persons in excess of the number of employees reasonably required by such employer to perform actual services."

<sup>6</sup> 60 Stat. 89, 47 U.S.C. 506. The Lea Act, in prohibiting certain practices, was confined to the radio broadcasting industry.

<sup>7</sup> 93 Cong. Rec. 6441

<sup>8</sup> *Ibid.* These constitutional problems resulted in this Court's decision in *United States v. Petrillo*, 332 U.S. 1.

<sup>9</sup> *Ibid.* Senator Taft also stated that as a result of these considerations, "the conferees were of the opinion that general legislation on the subject of featherbedding was not warranted at least until the joint study committee proposed by this bill could give full consideration to the matter." 93 Cong. Rec. 6443.

At Page 17 of its brief in *American Newspaper Publishers*

turned its back on all this compelling legislative background. In reliance upon a single statement torn out of the context of a heated congressional debate,<sup>10</sup> it enacted what Congress rejected.

Indeed, the court below even went beyond what the original House version of Section 8 (b) (6) had provided. That version contemplated an administrative or judicial determination of how many employees were reasonably required by an employer. Congress denied that vast power to dispassionate public agencies. The court below vests that power in partisan, private employers. It establishes the unprecedented and grossly unfair doc-

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*Association v. National Labor Relations Board*, No. 53, this term, petitioner contends that this Court has formulated a conclusive legal definition of the term "work" to mean "exertion pursued necessarily and primarily for the benefit of the employer and his business", citing the *Tennessee Coal* (321 U.S. 592) and *Jewel Ridge* (325 U.S. 161) cases. This Court gave the short answer to this contention in its later decision in *Armour & Co. v. Wantock* (323 U.S. 126, 133), where it held that employment in a stand-by capacity was to be computed as part of the work week for the purposes of the Fair Labor Standards Act and admonished that "it is timely again to remind counsel that words of our opinions are to be read in the light of the facts under discussion."

<sup>10</sup> This statement was made by Senator Taft (93 Cong. Rec. 6446) during an exchange of views with Senator Pepper. This statement reads: "It is intended to make it an unfair labor practice for a man to say, 'You must have 10 musicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway.' That is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept." The context and true meaning of this "slip of the tongue" statement are correctly pointed out in the brief of the Solicitor General, p. 40 ff.



trine that an employer can legalize or illegalize union action by what he says he wants or needs or is willing to accept. His uncontrollable whim or economic prejudice thus becomes the statutory standard of illicit conduct. If the court below be correct, then Section 8 (b) (6) constitutes an extraordinarily unique and palpably unconstitutional delegation of legislative power.<sup>11</sup>

Needless to say, the interpretation given Section 8 (b) (6) by the court below wholly negates the concept of collective bargaining presumably encouraged by the Taft-Hartley Act. Unions need not exist, much less bargain, if they may only request what the employer already wants or needs to give them. Without a conflict in desires or needs

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<sup>11</sup> The version of Section 8(b)(6) which we have seen was explicitly disavowed by the conference committee was based upon the Lea Act. And under the corresponding language of the Lea Act, this Court has made it plain that "an employer's statements as to the number of employees 'needed' is not conclusive" in determining how many employees are needed on a job. The Lea Act problem, said this Court, was one to be administered by judges and juries in accordance with the will of Congress and on the basis of "many factors." *United States v. Petrillo*, 332 U.S. 1, 6-7. Indeed, if the whim of the employer were decisive, grave constitutional problems of vagueness under the Fifth Amendment would be present. It was in answer to the charge of unconstitutional vagueness that this Court in the *Petrillo* case read the Lea Act so as not to make the employer's desire determinative of the legality of union action. And much the same concern to avoid the vagueness charge is implicit in this Court's statement in *United States v. Local 807*, 315 U.S. 521, 532, that "The state of mind of the truck owner cannot be decisive of the guilt of these defendants."

unions would never have been formed and collective bargaining never conceived. If collective bargaining means anything it means that each party may advance proposals and make requests that the other party does not want, does not need and is not even willing to accept.<sup>12</sup>

The decision below is no less destructive of the essence of collective bargaining than would be a statute or decision prohibiting employers from requesting any contract term that the union does not want or does not need or is not willing to accept.

If illegality is to attach to every proposal which meets resistance the freedom which marks the bargaining process is irrevocably destroyed. And if that is the result intended by Section 8 (b) (6) something far more convincing than the reasoning of the court below is glaringly indicated.<sup>13</sup>

#### ECONOMIC IMPLICATIONS OF DECISION BELOW

One of the fundamental purposes of a labor organization—the task of securing new job oppor-

<sup>12</sup> The Labor-Management Relations Act was not designed to give governmental support to the substantive bargaining position of either party. *Labor Board v. American National Insurance Co.*, 343 U.S. 395, 401-404.

<sup>13</sup> For reasons best known to itself, the court below avoided any reference to, much less discussion of, the legislative and judicial authorities extensively cited below by the Labor Board. This unusual, even cavalier, treatment is emphasized by the court's exclusive reliance on Senator Taft's isolated statement, a statement upon which respondent expressly "did not rely" (emphasis respondent's) because "it appears to have been a momentary lapse on the Senator's part." (Reply brief below, p. 6.)

tunities for its members—is rendered illegal by the decision below. Labor organizations are created out of the need and desire on the part of workers, helpless as individuals, to obtain employment and to protect employment already obtained.<sup>14</sup> Without employed membership no union could survive. And collective bargaining, which is the declared policy of the federal government, necessarily presupposes employment.

Indeed, in a society in which near full employment is obtained only in times of war and in which from three to ten million workers are chronically unemployed, it is folly to assume that organized workers will do other than attempt to defend themselves against abiding threats of unemployment. Technological displacement, moreover, has become a growing threat to many employees.<sup>15</sup> The obvious realities of contemporary industrial life thus make it necessary as well as desirable that workers seek enhancement of their employment opportunities.

The American Federation of Musicians, because of the circumstances in the industries in which its members work, is peculiarly sensitive to the never-

<sup>14</sup> This basic fact is classically demonstrated in Perlman, *A Theory of the Labor Movement* (1928). See also the statement of this Court expressing agreement with the fact that “practically always the crux of a labor dispute is who shall get the job, and what the terms shall be.” *United States v. Local 807*, 315 U.S. 521, 531.

<sup>15</sup> See Slichter, *Union Policies and Industrial Management*, pp. 164-281 (1941); TNEC Monograph 22, *Technology In Our Economy*, p. 3 (1941); Randle, *Restrictive Practices of Unionism*, 15 *So. Eco. Jour.* 171 (1948).

ending menace of unemployment. More than any other craftsmen in our economy, musicians are subject to loss of jobs as a result of competition by machine and by less expensive labor. The rapid growth of sound movies, the juke box and recorded music has aggravated the dismal job outlook for professional musicians.<sup>16</sup> For many Federation members music has necessarily become an avocation rather than a vocation. Fewer and fewer members find it possible to make a decent living from the musical profession. Small wonder, then, that they have been compelled to join together and take measures in self-defense.

These are some of the hard realities which have shaped the underlying labor policies of the federal government for many years. The thrust of the great labor and social legislation of the past twenty years has been toward the creation of employment opportunities and the adoption of other means that would minimize unemployment. It is unnecessary

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<sup>16</sup> See Petrillo, *Din Future for Musicians in TV*, *International Musician*, Vol. LI, p. 10 (August, 1952). "In the last twenty-five years, the market for music has grown by leaps and bounds, but full-time jobs for professional musicians have become steadily fewer. Mechanized music accounts for both the expanded market and the job shrinkage. Sound-track on film displaced 20,000 musicians who played in the silent movie theaters. The closing of most legitimate theaters and the virtual disappearance of road companies and vaudeville in the thirties, threw another 5,000 musicians out of work. . . . Today, 2,500 of the radio stations in the country employ no live musicians at all." Cluesmann, *The Support of Live Music in an Electronic Age*, *International Musician*, Vol. L, p. 9 (October, 1951).



to recite here all the many laws directed to that end which were spawned from the bitter experience of the great depression of the twentieth century. Such statutes as the Fair Labor Standards Act stand as permanent monuments to the modern governmental policy of spreading employment, of encouraging additional job opportunities which the employer might not need or be willing to concede. See *Overnight Motor Co. v. Missel*, 316 U.S. 572, 577-78. See also *United States v. American Federation of Musicians*, 47 F. Supp. 304, affirmed, 318 U.S. 741; *United States v. Carrozzo*, 37 F. Supp. 191, affirmed, 313 U. S. 539.

The decision below flouts that basic aspect in our national labor policy and illegalizes a basic objective of every union in the nation. Unless reversed, it would prohibit not only direct efforts to secure jobs but also such familiar union practices as strikes to reduce hours, to obtain overtime rates, to secure vacations or holidays or rest periods, in opposition to "speed-ups" and to resist mechanical displacement—all of which may be motivated in whole or in part by a desire to obtain more jobs than the employer thinks necessary or desirable or beneficial.

Surely it should take more than an offhand remark by one Senator to effectuate this traumatic uprooting of long and deeply imbedded traditions. Certainly so revolutionary a change should not be premised on a single, dubious observation, lifted

out of context, made in the heat of debate, in flagrant conflict with the language of the statute and totally inconsistent with the carefully prepared, studied remarks of the very author of that observation.

#### CONCLUSION

Hardly a day goes by but that some union does not make a request which calls for or necessarily requires the employment of additional employees and which is not resisted by employers on grounds of efficiency, economy, benefit or utility.

It is a measure of our freedom and a tribute to our system of law that such proposals are freely advanced and freely resisted without fear of sovereign intrusion or restraint. In the vast preponderance of instances the issue is resolved by discussion, concession or compromise. Where stalemates develop, parties are free to resort to peaceful, economic measures in defense of their positions.

We respectfully request that this Court preserve this freedom in accordance with the expressed will of Congress under any reasonable interpretation.

of the plain language and intent of Section 8 (b)  
(6).

Respectfully submitted,

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November, 1952.

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**In the Supreme Court of the  
United States**

**OCTOBER TERM, 1952**

**No. 238**

**NATIONAL LABOR RELATIONS BOARD, *Petitioner,***

**v.**

**GAMBLE ENTERPRISES, INC., *Respondent.***

**MOTION TO INTERVENE**

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# In the Supreme Court of the United States

OCTOBER TERM, 1952

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NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

GAMBLE ENTERPRISES, INC., *Respondent.*

## MOTION TO INTERVENE

Comes now Local No. 24, American Federation of Musicians, and moves this Honorable Court for leave to intervene in the above-entitled case, in which the petition for a writ of certiorari was granted on October 13, 1952, directed to the Court of Appeals for the Sixth Circuit. In support of this motion, Local No. 24 shows as follows:

1. The sole issue in the case is whether the demand by Local No. 24 that certain of its members be hired for actual work constituted a violation of the "anti-featherbedding" provision of Section 8 (b) (6) of the Labor-Management Relations Act merely because the employer did not desire to employ them. The Labor Board agreed with Local No. 24 that no such violation was involved. The Labor Board then sought to sustain that position in the court below and now does the same before this Court. Local No. 24 is thus at the very center of the controversy as to which this Court must render a definitive opinion. Quite clearly Local No. 24 will be most directly bound by the judgment that is ultimately entered by this Court. A decision adverse to its interest would result in the entry of cease and desist order against it, with all the attendant court sanctions.

2. The issue posed by this case is of critical importance

to Local No. 24 in particular and to the American Federation of Musicians in general because of the acute unemployment among professional musicians. At the present time, these organizations have no more fundamental task than seeking additional employment opportunities for their members.

3. The court below, as revealed in the headnote to its opinion and in the list of attorneys appearing before it (196 F. 2d 61), recognized the very real interest of Local No. 24 and permitted it to intervene in the proceedings before it and participate in the oral argument.

4. Intervention in the proceedings before this Court will not unduly delay or prejudice the adjudication of the case. On the contrary, Local No. 24 desires to bring to this Court's attention only those matters which would not otherwise be submitted to it and which might contribute materially to the Court's appreciation of the issue raised in the case.

Respectfully submitted,

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